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Official Report of Debates (Hansard)

Thursday 21 October 1993

Journal des débats (Hansard)

Jeudi 21 octobre 1993

Standing committee on
general government



Comité permanent des
affaires gouvernementales

Environmental Bill of Rights, 1993

Charte des droits environnementaux
de 1993

Chair: Michael A. Brown
Clerk: Franco Carrozza

Président : Michael A. Brown
Greffier : Franco Carrozza



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STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday 21 October 1993

The committee met at 1003 in committee room 2.

ENVIRONMENTAL BILL OF RIGHTS, 1993

CHARTRE DES DROITS
ENVIRONNEMENTAUX DE 1993

Consideration of Bill 26, An Act respecting Environmental Rights in Ontario / Projet de loi 26, Loi concernant les droits environnementaux en Ontario.

The Chair (Michael A. Brown): The standing committee on general government will come to order. I would like to report to the committee that we had a subcommittee meeting on Monday afternoon. At that committee meeting there was agreement of the committee that we would start today by discussing procedural matters. As members of the committee know, there were a number of outstanding issues related to the scheduling of this committee's time. I will begin by entertaining any suggestions on how we deal with those procedural matters. Mr Mammoliti.

Mr George Mammoliti (Yorkview): I move that in the time remaining this morning the committee be given a technical briefing by the Ministry of Environment and Energy.

That the clerk of the committee be authorized to schedule the following witnesses to appear before the committee this afternoon for half-hour presentations: Mark Winfield (Canadian Institute of Environmental Law and Policy); Laidlaw; Marsha Valiante (lawyer/academic); Ole Hendrickson (Concerned Citizens of Renfrew County); Mimi Keenan. If a representative of Laidlaw is not available, he or she will be placed back on the waiting list and the Ontario Mining Association shall be invited to appear. If any of the above-named representatives are unable to attend, he or she will be placed on the waiting list and Morgan Gardner (academic) will be invited to appear.

That the clerk be authorized to schedule witnesses on the morning and afternoon of October 28 from the list of witnesses that have already contacted him. They will be scheduled on a first come, first serve basis from the existing list, with any new additions to be added to the bottom of the list. Presentations to the committee on October 28 will be 20 minutes in length for each witness.

Advertising in the daily newspapers will start immediately notifying the public that hearings have commenced and written submissions will be accepted until November 2, 1993.

The Chair: Do you wish to speak to your motion?

Mr Mammoliti: I don't think there's a real need to get into the history in terms of how we've gotten here.

I need to put on record that I'm very disappointed with how the subcommittee has dealt with this, not at this level, not on this side of the committee, because we have certainly tried to be accommodating. We have literally bent over backwards to accommodate both the Liberals and Conservatives. On a number of occasions, after we've done that, after I've done that, they had changed their minds at the last minute and decided to renege on certain issues.

That, to me, is very disturbing, and it's not this committee only that suffers; it's Ontario that suffers with this kind of attitude. I will certainly be trying to convince not only my colleagues but the House leader to relay what has happened and why we've had to introduce a motion such as this one to the environmental community out there and let them know exactly who is holding up the process and let them know that, in our opinion, it's being done intentionally.

I'll close by saying that we've tried. We've tried to cooperate with the Liberals; we've tried to cooperate with the Conservatives. We've done it in a way that I believe hasn't been done in the past. We have given in on a number of occasions in terms of issues and areas that we felt strongly about in order to expedite the process. But they continually held things up and continually have forced our hand into putting this motion forward today.

I'm looking forward to continuing the hearings. I'm looking forward to not only hearing from the ministry but hearing from the witnesses we have planned before us this afternoon and on the 28th. In my opinion, and I think I speak for our side of the committee, if there are any further delays, it could jeopardize any communication of this bill to the rest of Ontario, which could leave environmentalists and Ontarians very upset. Frankly, I hope I don't see that.

I hope we can have a very brief debate on the motion. I'm sure that both the Liberals and the Conservatives have got something to say about the motion and I'm quite willing to listen to them, as I have in the past. But at the same time, on record, it's my guess that they're going to try to weasel their way into stalling this as long as they can. Frankly, I hope that's not the case. I hope we can get on with the hearings. I hope we can get on with the ministry briefing.

The Acting Chair (Mr Bernard Grandmaître): Thank you, Mr Mammoliti. I'm advised by the clerk that you should review the advertising period, the fact that the scheduled witnesses on the morning and afternoon of October 28 and your advertising in daily

newspapers will start immediately, notifying the public that hearings have commenced and written submissions will be accepted until November 2. So it only actually gives us—is it two days, Mr Clerk?

Clerk of the Committee (Mr Franco Carrozza): The earliest we can get is the 26th and 27th.

The Acting Chair: The 26th and the 27th. Do you think we should be spending \$15,000 for two days?

Mr Mammoliti: Yes.

The Acting Chair: Very good.

1010

Mr Steven Offer (Mississauga North): I've read the motion moved by Mr Mammoliti and heard Mr Mammoliti's opening comments and I have a few things to say about this.

Just to begin, I think the question you've raised as the Chair in consultation with the clerk to Mr Mammoliti on what exactly the advertising in the daily newspapers actually gives to the general public is but two days from not only notification of the acceptance of presentations but also telling the general public in this province that they have a couple of hours to write their presentation underlines and underscores the matter as it has been introduced.

Let me say firstly that what Mr Mammoliti has indicated in terms of reneging on certain agreements is untrue, and I think I'm allowed to say that because Mr Mammoliti has brought this matter up in his opening comments. I believe it need only be stated it is totally untrue in terms of what he has indicated.

I won't go into the subcommittee meetings at length, except to say that agreements between the representatives on the subcommittees, representatives of each party, were not possible. There were substantial differences of opinion as to the time that should be allocated to individuals and indeed the time that should be allocated for these hearings.

What we are left with is a very complicated piece of legislation. It's a piece of legislation which carries 126 sections—that's exclusive, of course, of the subsections—and should affect just about everybody in this province. It's a piece of legislation which I and my party spoke in favour of, in principle, on second reading. It's a piece of legislation which we believe carries with it the need, if not the demand, for the general public to have the right to make submissions.

We heard last week that the Minister of Environment and Energy has already acknowledged that there are amendments to the bill. He stated that. Where the amendments are and what they are, we do not know; in fact the general public does not know. So not only will there be, in essence, no public hearings, but in fact we do not have the full text of the bill as a result of the acknowledgement by the Minister of Environment and Energy.

We have a list of individuals that the member wishes to be heard. I have no objection to that. I believe they should be heard. But let's remember who this committee is not going to hear. Let us remember the people who have called the clerk even before advertising, who have said, "This is an important bill, a bill on which we want to bring submissions, our opinions, to the committee."

The actions by the government, by in essence saying, "Public hearings are going to be a day and a half," exclude the Ontario Corn Producers; Ontario Waste Management Association; Ontario Aggregate Carriers Producers; the Association of Major Power Consumers in Ontario; the Ontario Real Estate Association; Metro Toronto Works; Dow Chemical; lawyers from Fraser and Beatty; Dianne Saxe, a lawyer; a person representing the firm of Miller, Thomson; an individual representing the firm of McCarthy Tétrault; the Canadian Federation of Independent Business; Hazardous Materials Management from Metro Toronto; again representation from a law firm, Gardiner, Roberts; the Ontario Federation of Agriculture; the Ontario Sewer and Watermain Contractors Association; St Lawrence Cement; the Association of Canadian Distillers; the Ontario Forest Industries Association; the Ontario Mining Association; Falconbridge; WMI Waste Management; the Canadian Chemical Producers' Association; representatives from Cassels, Brock, another law firm.

Further will be excluded representatives from Northwatch; representatives from the Citizens Network on Waste Management; representatives from Rural Action on Garbage and the Environment; representatives from Green Work Alliance; an individual, Morgan Gardner; the Toronto Environmental Alliance; Citizens for Environmentally Sustainable Development in Vespra; the Conservation Council of Ontario. The Association of Municipalities of Ontario will also be excluded. The South Innisfil Ratepayers will also be excluded. The Citizens Environment Alliance of South Western Ontario and the National Farmers Union, Local 309, want to come and they're excluded.

The Nuclear Awareness Project is excluded. The Canadian Environmental Defence Fund is excluded. The Citizens Environmental Action Group is excluded. The Sierra Club of Eastern Canada is excluded. The Friends of the Earth, Canada, are excluded. Representatives from the law firm of Genest Murray are excluded. A citizen of this province, Kara Symbolis, will be excluded. Residents Opposed to Environmental Negligence will be excluded. Julie Pearce, a citizen, and Richard Taves, a citizen, will be excluded. Kathy Brosemer, the chair and project manager of Clean North, will be excluded. Representation from the Coalition on Niagara Escarpment will be excluded. The Ontario Environment Network, the waste caucus, will be excluded. Ducks Unlimited will be excluded. The Urban

Development Corp will be excluded.

With the Ontario Mining Association there appears to be some effort made, but most likely it will be excluded. Professional Engineers of Ontario will be excluded. The Ontario Waste Management Association will be excluded. An individual from the association of PACT will be excluded. The Ontario Forest Industries Association will be excluded. Nirv Centre will be excluded. The Bruce Peninsula Environment Group will be excluded. Citizens for Public Justice—goodness, could we use them here—will be excluded. The Federation of Ontario Naturalists will be excluded. The Peace and Environment Resource Centre will be excluded. The Wildlands League will be excluded. The Thames Region Ecological Association will be excluded.

1020

Mr Chair, who else will be excluded is a representative from the Lung Association. They will be excluded, as well as the Eco-Council of the Peterborough Area. These are people who, before the ads have gone into the newspaper, said, "We want to come before this committee to make a presentation on this bill," a bill which as the Environment critic for my party I stood in support of in principle, but recognized that there were some significant areas that had to be dealt with.

I hoped, actually I thought, without question, that there would be public hearings, listening to the general public as to what this bill means to them, whether they are in favour of it, whether they are opposed. If they are opposed, why? If they are in favour, why? Does the bill go far enough? Does the bill go too far? Does the bill have implications that we are not aware of, for which we rely on the general public?

There has been a task force created which really was the genesis of this bill. I don't want to put words in the mouth of my colleague Mr Tilson, representative of the Progressive Conservative Party, but we felt—and if he wishes to correct me, he will have that opportunity—that it was really important, because the task force was the group that started this whole thing rolling, to hear from them.

What were some of the issues that were being discussed among the groups of the task force, people who represented Pollution Probe, people who represented the Canadian Manufacturers' Association, people who represented a variety of other groups? Does the bill encompass all that they hoped it would encompass? Is the bill falling short? We thought, what problem could there be to ask the task force to come before the committee so that we would have the opportunity to ask them questions on the bill? You can see by the motion moved by Mr Mammoliti that there is no representation from the task force.

Another issue which I feel very strongly about is that this is a very complicated bill. I believe the committee must do all that it can to listen to as many people as

possible. Now, members of the government will say: "Well, there it is again. There it is. It's the opposition delaying the bill; the opposition delaying a bill that they spoke in favour of."

I recognize that there are sometimes committees that can't hear everyone that they want to hear, that they have certain time constraints. This bill does not fall into that category; it doesn't because this bill is basically hearing a small group of the number of people who want to be heard.

We are not going to be hearing from the major groups and associations that I believe have a great deal to give to a committee of this kind on a bill of this nature. That is not a matter of delay. It's a matter of, are you responsible or irresponsible? Are you going to pass a bill into law not being aware of the concerns, of the issues that groups such as Ontario Waste Management or the Association of Municipalities of Ontario may have?

I believe—and I say this knowing I spoke in support of the bill in principle on second reading—that it borders on the irresponsible to pass into law a bill where we have not heard from individuals. It borders on the irresponsible to pass a motion which gives groups and individuals in this province about two days' notice, that they have two days to build a presentation on a bill as complex as this. It is strange that we talk about a bill which is held up as the Environmental Bill of Rights, which I happen to have some questions about, and we do not give the public in this province the right to be heard.

It seems that a bill of this nature is sort of off on the wrong foot. Surely the government cannot be so afraid to listen to individuals who may, in the main, be speaking in favour of the bill, to parties and representatives of parties who, on second reading in the Legislature, spoke in favour of the bill. Let's not forget that we spoke in favour of the bill. Let's not forget that the general outline of the bill and the work of the task force was one of which we said, "Let's support it." Let's not forget that we also think that maybe, just maybe, there are individuals in this province who might have a tad more wisdom, a tad more expertise, a tad more experience in these areas than any member in this committee and in fact any member in the Legislature.

It behooves us, as members of the Legislature, to use our time wisely and well, and that would be to have full public hearings to allow people in this province the right to come before this committee to tell us what they feel is important about this bill.

Mr Jim Wiseman (Durham West): We could have had one submission already.

Mr Offer: I understand, and I can hear some of the heckling from the government members, but they heckle and interject only when there is the position put for-

ward, why not hear some people from the general public? There may be the argument made that the task force went on a broad consultation process. I must tell you I am not fully aware as to the process of consultation that the task force did undertake. I will take it as a given that the task force did in fact speak to a number of individuals, but that is not consultation on the bill. Consultation on a bill and public hearings on a bill are a different focus than that which the task force has done. They did their job well, no question, but now we have a bill before us on which the general public should have the opportunity to share their thoughts with us.

It is a strange day when, on an Environmental Bill of Rights, we start off by excluding rights. It is a strange day when we exclude people from bringing forward their positions on a piece of legislation which carries with it an overriding purpose for residents of Ontario to be more in tune with decisions around the environmental area.

This bill has started off on a very bad footing. This bill already could have been in public hearings. It is silly that you will give public newspaper notice of 48 hours to the people in this province to say to them, "You read the newspaper, you must also have a presentation, it must be in to the clerk and you have 48 hours to do that." It is silly to do that. It is irresponsible to be supportive of anything like that. It is irresponsible to support a motion which carries with it the façade, the sham of public hearings when in fact there are none. It is irresponsible to say that you can deal with a bill of some 126 sections in a day. It is wrong for us as a committee to entertain this motion.

1030

Procedurally I recognize we must, but it is wrong for us as a committee to say yes to a motion like that, because if we say yes to this motion, then I will tell the people watching that the environmental representatives and the business representatives, those who support this type of motion, will have no argument when other bills come before this Legislature and they come before committees and say, "Listen, we represent an environmental group and we think that a bill should have full public hearings and we think it's irresponsible to have shortened or no public hearings."

Those environmental groups that support this motion—I hope there are none—if they do, will be reminded then, "Why could you not speak out when public hearings were being afforded in another area, under the Environmental Bill of Rights?" They set a very dangerous precedent, business groups and environmental groups that are not ready to stand up and say, "The procedure as outlined by the government is wrong," even though everyone has supported the bill. There are too many people who want to speak to this bill. There are too many people who have a wealth of experience whom we as legislators should hear.

Again, in response to the opening comment made by Mr Mammoliti, which I have said in the strongest terms is untrue, I could speak, Mr Mammoliti, on this, on principle—

Mr Mammoliti: On a point of order, Mr Chair: Is "untrue" parliamentary? Is he allowed to say that in committee? I can go into a huge comment in terms of how it—

The Acting Chair: "Untrue," as far as the Chair is concerned, is acceptable; he didn't call you a liar.

Mr Wiseman: What's the difference?

The Acting Chair: Well, "untrue"—

Mr Offer: If there's no difference to you, then—

The Acting Chair: Mr Offer, please.

Mr Wiseman: Then what Mr Offer is saying is equally untrue.

Mr Offer: So I will say, again with respect to where I was before I was interrupted, that the fact is that—

Mr Wiseman: I'm glad that you know we have new lexicon of words that we can use in the House.

Mr Offer: —I could very easily, on principle, speak this day out. I could speak on this because this just goes against every grain in my body; this is just wrong. I don't have the legislative experience of a great many other people in this place, but I do have some and I do know what's right and what's wrong. Even if you are in favour of a piece of legislation where there are a great many people who want to be heard on it, we have the right, if not the responsibility, to hold public hearings. That doesn't mean to say you hear everybody, because we do have time constraints, but it does mean to say you try to hear some people. This bill fails for that reason; this motion fails for that reason.

I will not speak the day out, Mr Mammoliti, notwithstanding your assumption, because you have been proven wrong again. I will only urge that members of the government think about not only this bill but future bills, the people who want to be heard and won't be and your constituents, who may be calling you next week and saying, "We want to be heard on this bill." Think about what you are going to say. You are going to say no to them because you supported this motion. I ask you to think about that, to think about your constituents' rights, to give them a right to walk through that door as opposed to voting in favour of this motion which does nothing less than lock this committee room door. I hope everyone will unanimously vote against this motion.

Mr David Tilson (Dufferin-Peel): Listening to and reading the motion, I can say that the Progressive Conservative caucus is so upset with this motion that we're tempted to walk out, we're so insulted by the motion. However, we have to represent our constituents and walk through the procedure this government is setting up. But it is a most insulting motion to the

people who are trying to obtain rights.

It's ironic that we're talking about an Environmental Bill of Rights, the intent of which is to stand up for the little guy, to allow the little guy to fight big government, and yet we're not allowing the little guy to come to these proceedings. We're being most restrictive. It's a most ironical procedure that the government boasts that it's sticking up for the little person, the person whom it perceives now as not having rights, and now it's not giving that same person the right to come to these proceedings, a most ironical twist of procedure.

I'm going to try to restrict my comments to the procedure which this motion is. I didn't rise on a point of order that it would be out of order, but the motion that Mr Mammoliti brought last week was that the deputy speak for the duration of this morning. He brings a motion that I assume he hopes we will say nothing on, that we will simply agree with it or disagree with it and not speak on it. Hence, the time that he was allowing for the deputy is simply going to be cut down completely. My guess is, and I have a few remarks to make, that there's no question the deputy or whoever's speaking on behalf of the ministry will not have the time to make an adequate presentation because of this procedural motion, unless Mr Offer and I simply say nothing.

I can understand your hope that we would say nothing, but we have an obligation to raise our objections to the procedure that you are proceeding with. So it's reluctant. My guess is that the ministry has much to say, and my further guess is that because you're only allowing a morning for the ministry staff to come to us we will have absolutely no time to ask questions of the ministry.

The ministry has its slide machine or its overhead machine set up and all ready and is ready to proceed, and I will try to make my comments brief so that we can hear from the ministry staff, but the fact of the matter is that you know and I know, and Mr Offer knows, that we will have little or no time to ask the ministry questions of concern that we have, technical questions. We may never know the answers to those things because of the motion which you set up last week.

The motion has now been passed by this committee. It restricts this committee to simply hearing delegations. There will be absolutely no time allowed for the members of the opposition or members of the government to ask technical questions of the ministry staff. You have precluded that.

My goodness, there's a list that has appeared on my desk, which I assume all members of the committee have, which has 46 names of people, and I assume this is a list of people who have expressed an interest to speak; the clerk is indicating that's correct. I certainly notice that of the names I had submitted to the subcommittee, of which I had about 20, some of them are on

the list but a lot aren't.

My guess is that therefore, before advertising, we're up to 60 to 70 names of people who are going to speak. We're going to spend \$20,000 on an ad for one day which we can fill, without advertising, with the people who have indicated an expression to speak. That's what the clerk informs me it's going to cost, approximately. We're going to spend approximately \$20,000 for an ad simply to get written submissions. So the whole process of consultation is an unbelievable farce.

1040

I must say I have in the past specifically complimented Mrs Grier; I think I made the comment in the House in the second reading debate. I made the comment to Minister Wildman when he was here, complimenting the government on obtaining the support of business and the environment.

But I read today an article that came to me from the Ontario Urban Development Institute, which probably won't be heard at these hearings. Mr Morley Kells has written an article which, I might add, takes an indirect shot at the Liberals and the Conservatives for patting Mrs Grier on the back. I complimented her on the back because I was led to believe by members of the task force that there had been wide consultation with respect to this bill.

So even before we get to the task force, the consultation that the government is submitting took place did not take place. Since it did not take place, there are many people out there, such as the 60 names that we know exist now before advertising, who want to appear before us. Mr Kells—I'm going to read some of his comments—explains how he has not been heard on behalf of the Ontario Urban Development Institute. They want to come to this. I don't know whether they're on the list or not, but I expect that—

Clerk of the Committee: Yes, they are.

Mr Tilson: They are on the list?

Interjection: But they won't be heard.

Mr Tilson: The motion says, I might add, that the group this afternoon is going to have half an hour. The following group on the next day is going to have 20 minutes. I guess it's another example with this government that some people are more equal than others, that some people are going to have half an hour to speak and some people are going to have 20 minutes to speak. My guess is we'll have little time to ask those people questions.

It's a complete joke, it's a complete sham, the process that you're setting up for consultation, and I would ask the—I don't know what you are, Mr Mammoliti; I suppose you're the caucus chair for the government.

Mr Mammoliti: It depends on whose eyes you're looking through.

Mr Tilson: I'm trying to be respectful to you—the spokesperson for the government. But I would ask that the government take another look at what you're trying to do, and there's still time to do that.

Mr Kells, in this newsletter of October—which is probably on your desks today; I just received it—quoted Mr Wildman, the Minister of Environment and Energy, from Hansard on September 27, in the House talking about the wide consultative process, “The bill represents the outcome of a very highly successful consultative process.”

Then he goes one step further and he says: “One thing, though, that the business community was very concerned about and that I understand, was the need for regulatory certainty, to know what the rules are and to know that the rules will be enforced or carried through fairly. This bill provides regulatory certainty for those who want to make decisions regarding investment in this province.”

I listened to the minister and I believe what he said. He's the Minister of Environment. Hopefully, he's going to tell the truth. Hopefully, I'm going to accept what he says. Maybe that's from a naïve politician—

Mrs Irene Mathysen (Middlesex): Ha. If you're naïve, I'm the Princess of Monaco.

Mr Tilson: Well, I believed him.

Here's Mr Kells's response in this newsletter: “Now all this reads well in the legislative record, but it is blatantly not true and MOE&E staff knows it, because I've told them so bluntly. As usual, some additional background is in order and then a look at the bill from our industry's perspective.”

They have made submissions to the MOE which I don't believe ever reached the task force. They want to speak at this committee, but they're not going to be allowed to speak to this committee. They have some very constructive suggestions and they want an opportunity to be heard, and they're not going to be given that opportunity.

He says, “Let me assure you that the developers, the home builders, the renovators, the construction industry and the demolition people were not part of the process. Realizing this, the Council of Construction Associations”—and that's COCA, as you know—“a year ago spearheaded a meeting at which we all participated and prepared a submission to the minister,” who then was Mrs Grier. “Roger Beaman of Thomson Rogers,” a law firm in Toronto, as you know, “and a member of the UDI executive committee, helped craft the document which covered our collective concerns in detail.” Then he talks about a letter that he wrote to the ministry which appears to have been ignored.

Then he says: “The task force was composed of business, government and non-government organizations. It should be duly noted that the closest thing to

representation from the development industry was consultation periods with the Sewell commission.”

That's the closest this government came to consulting these groups of people, and this is just one. I don't know; I fear that as time goes on there are going to be other newsletters that are going to come forward of people who are going to complain that they were not heard.

The purpose of the bill is to enable people to be heard. That's the sad part of it. You're boasting that the bill is going to give the little person the right to be heard and here we're not allowing the little person, or the big person, to be heard. We're not allowing a whole slew of at least 60 people, before advertising takes place, to be properly heard.

Then he continues, and I'll try to be brief because I honestly want to hear from the deputy but I want to put my strong concerns—because you're going to pass this motion, notwithstanding the unbelievable amount of flaws in this. My goodness, what an absolute farce to spend \$20,000 to advertise for people to come on the 28th and you're telling them right now: “You're not going to be heard. You're not going to be heard because the people who are on the list, we're going to take it in order. If you're lucky enough to write”—

Mr Mammoliti: Are you saying the written submissions aren't important, David?

Mr Tilson: I'm saying they have the right to be heard, Mr Mammoliti. They have the right to be heard by this committee and I, as a member of this committee, have the right to question them. You are precluding me as a member of this Legislature from the right to ask those individuals questions of clarification.

I suppose, because you're ramming this through, you could say, “Oh, you have the right to write them back and ask them questions; you have the right to phone them.” I personally would like to hear other members of this committee ask those questions. I may not think of them. As Mr Offer says, we are not experts in this field. Many of these people are experts. I'd like to hear Mr Offer's questions. Believe it or not, I'd like to hear your questions and I'd like to hear answers to all of those. You've made this whole process an absolute, unbelievable farce.

Mr Kells continues by saying: “Attending the quarterly meeting of the housing interest group sponsored by the MOH, I found Dr Peter Victor, assistant deputy minister in charge of the Environmental Bill of Rights, explaining about the marvellous response of business to the EBR. I took umbrage with this and told him so and I asked him who it was that he consulted so deeply with. He answered: the Ontario Chamber of Commerce.” That's it; that's the consultation. Can you believe it?

“I sighed heavily and then asked Dr Victor if the bill

had been altered as a result of my letter and of COCA's submission. He said no. The bill would go to the Legislature in the same form as it was before our comments."

I have to retract my compliments towards Mrs Grier and Mr Wildman, because they didn't consult as they said they did. I hesitate to use the word "misled," Mr Chair, because I appreciate it's unparliamentary, but I was led to believe something that didn't happen. I was led to believe there was wide consultation, and here's at least one group, and I'm sure there are others, as time will reveal, that says there wasn't the wide consultation.

"As a result of this, the honourable Bud is marshalling this bill through the House unaware (I suspect) that anybody had any concerns whatsoever." He's being kind to Mr Wildman. Mr Wildman was led to believe that there was wide consultation and there wasn't. There wasn't the wide consultation and perhaps Mr Wildman was led to believe something that didn't happen, to be fair to him.

"UDI has warned about definitions, applications for review, right to sue and intervenor funding," and they're saying they will not be able to adequately come forward and present to this committee their concerns with those topics.

"The land and building industry (and municipalities) were not included in the task force. The task force decided that the EBR should apply to the Planning Act at least with respect to provincial policies and instruments. The task force claims to have used a consensus public consultation process to reach unanimous decisions on the content of the EBR. However, since the land and building industry was left out of the process, there are key problems with the proposed EBR from the development industry perspective remain."

1050

Again, I'm quoting extensively from this October newsletter from the Urban Development Institute.

"The EBR duplicates laws, powers and causes of action already in existence in other acts, including the Environmental Assessment Act, the Environmental Protection Act and common law causes of action. UDI questions the fact that the task force could not debate whether the EBR was necessary, given existing legislation, or whether amendments to existing legislation would be preferable to creating an entirely new statute."

You may say, Mr Mammoliti, that I'm reading this and fine, and they may give me a presentation and that's fine. I would like to ask them questions as a member of this committee. I would hope you, as an intelligent member of this committee, would want to ask them questions. Certainly I know Mr Offer would. We're not going to get that opportunity because of this motion.

Then he quotes myself as patting Mrs Grier on the

back and he takes an indirect slap at me and perhaps well deserved, because I was led to believe by the minister that there was wide consultation. I'm afraid that Mr Kells has said I was misled. I was led down the garden path and I'm darned annoyed by that. When I compliment a minister of the crown and I'm doing it sincerely, and I did—Mr Kells has taken a shot at me for doing that. When I read this, he's perfectly right in his annoyance. I shouldn't have patted the minister on the back.

He talks about going to committee: "Well, as you know, it's difficult to be perceived as being opposed to the EBR, and UDI is not, but we have our concerns and so do our business colleagues.

"Where I become nervous is this almost total acceptance by society that everybody was consulted by the mere stating that they were. Well, we weren't, and that's that."

So the misleading statements that have come out by the Ministry of Environment, the minister's office. I don't mean to take shots at—

Mr Mammoliti: On a point of order, Mr Chair: The word "misleading," is that parliamentary? If it isn't, I would ask that the member withdraw the word "misleading."

The Chair: I'm certain that Mr Tilson will make sure that he's in accordance with parliamentary procedure.

Mr Tilson: Of course, Mr Chair.

Finally, Mr Kells—

Mr Mammoliti: That's an excellent ruling, Mr Chair.

Mr Tilson: Finally, Mr Kells—well, I'm reading Mr Kells. I'm reading, "Where I become nervous is"—I'll read it again. You didn't hear me.

"Where I become nervous is this almost total acceptance by society that everybody was consulted by the mere stating that they were. Well, we weren't, and that's that."

He concludes by talking about lobbying. That's what this is all about. Members of the public, the little person, the lobbyists, the persons who have direct interest in the Environmental Bill of Rights, the big, bad company that may be doing improper things with our environment, the person who's trying to draw those issues to attention and the fact that they may in the past have not had the legal right, may support this legislation or may oppose this legislation, but many of them have things to say as to potential amendments.

Mr Kells concludes: "Lobbying is perceived by the public to be a negative exercise barely to be tolerated and subject to ridicule and suspicion. But what are you to do when the chamber of commerce is called your industry spokespeople?" And that's what the govern-

ment is saying, that the chamber—and I don't mean to criticize the chamber of commerce. I agree with a lot of what they say. They contribute a lot to our process. They're a very worthwhile organization. The fact of the matter is, the government's saying that the chamber of commerce is a spokesperson for all of these people.

I'm continuing on with Mr Kells: "And political party policy is prepared in a vacuum by little minds and utilizing hopelessly out-of-date theories with little or no consideration of the economy or the state of the government's finances.

"What are we to make of this continuation of slights in relation to the ruling party and slants in connection with the policy of the official opposition party?"

Mr Kells has taken a shot at the government and he's taken a shot at the opposition parties for being lulled into what you have said is a wide consultation process. Well, I'm not being lulled into the wide consultation process that you're putting forward today. It's a farce and you know it's a farce to allow less than half a day for consultations, and to allow another day, October 28, which is essentially four hours, is a farce.

Mr Wiseman: I have a few comments I would like to make. Since last Thursday, I have consulted with a large number of environmental groups that I have continuous contact with. I put to them very clearly the question of what they would prefer, that we hear everybody and therefore not get this bill until perhaps June or never, given the current atmosphere, or whether they would be prepared to put in written submissions in order to have their voices heard. Unanimously, and mind you it's a small sample, they agreed that it would be preferable to have the bill, that they would be prepared to put in written submissions because it's paramount in the eyes of the public that they get this bill.

I'd also like to point out that this has been going on since May 31, 1993. If one goes back and reviews the debate in the Legislature of the last session, one will note that not really much constructive work was done until July and that this bill could have been passed in second reading in the Legislature and gone out to committee during the summer months and had a full hearing as other bills did.

I regret that didn't happen, but I think it was the product of a failed system in terms of what happens in the Legislature: posturing by all sides, playing the game, the cameras are on, people want to make their speeches, they want to get their voice heard, they want to have their constituents see them, but I think it's time that we started to set down our priorities and find out exactly what it is that we want to do.

Right now, judging by what is coming from environmental groups all over the province with respect to the contamination increases in the Great Lakes, the whole

issue about contaminants from all the different uses of chemicals and so on in our society, I think we have to put the environment as a priority because, let's face it, we're experimenting with our future here. I would say that my major concern in terms of this bill is putting the environment first.

A lot of what we're talking about here, even Bill 143, the most contentious bill of the Legislature, when we discussed Bill 143 in subcommittee, was decided in subcommittee. It did not come back to the full committee to be debated with the resolutions in this way. It came back and the committee said, "Yes, we do it this way."

If memory serves me correctly, we said that every party would choose who they would hear for one full hour and then the rest would be heard for 20 minutes and that not everybody was to be heard because there were so many submissions. A lot of them were done verbally but a lot of them were also done through written submissions.

I would say it is unfortunate that we have spent almost 50 minutes this morning talking about something that should have been agreed to in subcommittee. I would also ask the opposition, when does it expect to have this bill passed? Do they expect to go with it and have it done completely, third reading finished, by the Christmas session? When do they expect that the committee will be able to do the rest of the work that is going to be brought before this committee?

There is a lot of work to be done in this committee. I'm afraid that for the benefit of society as a whole, with things changing as fast as they are, we must speed up the rate at which we work in this place. A lot of these lists could have been presented a lot sooner than they have been and they could have been prioritized as they were in Bill 143 when they were submitted.

1100

I think one of the principles of submitting submissions to this committee in writing is the assumption that everybody will read them. I have every intention of reading every submission that is presented to this committee, and I know other members would do so as well.

I think what we need to do is to recognize that offers have been made here to have Tuesday hearings. Nothing in this resolution—and I'm really disgusted by the fact that we even have to put this resolution forward—precludes the idea that we could have a subcommittee meeting and agree to Tuesdays, that we could have a subcommittee meeting and agree to Fridays or a subcommittee meeting and agree to have other days for committee hearings without having to bring it to resolution and debate it two and a half hours last week and now an hour this week.

Just in terms of written submissions, I don't know

why people believe that their written submission isn't part of the consultative process, but I guess the UDI believes that. But I can tell them, and I will put it here on record now, that I read every submission that was presented at the Bill 143 hearings, whether it was written or presented orally, and that my position was after having read all of those positions.

The UDI says it was not asked. I would submit that if they've made a submission, they were consulted. They may not agree with what's in the bill entirely. That's fair, because I can tell you that the art of compromise and the art of creating legislation is going to mean that some people are never going to be satisfied. Let's face that up front. It doesn't matter whether we're the government or you're the government or the Liberals are the government, not everybody's going to be satisfied.

But personally, and without too much hesitation, I will say that in terms of the environment, for me the issue is very clear. The environment has to be a priority. The experiment that we're doing on the environment now with chemicals, with ozone, with methane and all the things that we're doing, to me this experiment has got to stop and I see An Act respecting Environmental Rights in Ontario as a move towards that.

We have spent three and a half hours jockeying back and forth here for whatever reasons. I say that it's time to get on with it and therefore I would ask that the question now be put.

The Chair: Mr Wiseman has asked that the question now be put. Upon consideration, I would note that the government has had two speakers on this issue and that each of the opposition parties have had only one. Mr Johnson.

Mr Mammoliti: On a point of order, Mr Chair: You clearly indicated in your ruling that the government had had two speakers and each of the others has had one. I would ask you to also consider the amount of time that was spent in each caucus—

The Chair: There's no debating an order. Mr Johnson.

Mr David Johnson (Don Mills): I'll try not to be too long. But I think what we'll find here is that the consultation that has occurred has occurred predominantly with people with a certain philosophy or a certain message. I think what's coming out more and more is that the consultation hasn't been as broad-based as it should have been.

Secondly, I think what we'll find is that people who were consulted were consulted with general views and general principles, but once you put it down in black and white, once you put it down with specific proposals, then the real communications really need to start, the real discussion and the real debate and talking to people directly. That's when it's most important and that's

where we're at right now. We're out of some sort of general consultation into the specifics and this is when it really affects people, right in their backyard, where they really get interested and are anxious to have their views known.

That's why we're here and the unfortunate part is that, by my calculations, of the 46 people, individuals or groups, who have asked to speak to this matter, and we'll fully expect many more than those 46, we're going to be able to accommodate about 18 of them. I really think that's unacceptable.

I ask myself, if we spent even another three Thursdays, at probably 13 deputations a day, given 20-minute deputations, that would be 39 more deputations, 39 people who would feel they've had the opportunity to talk directly to the specific recommendations of this bill, not in some general fuzzy way but specifically to what's in this bill and specifically how it may impact on them or specifically how they would like to see it altered. I think that would go a long way to addressing the concerns that Mr Tilson, for example, is raising here today.

Would the sun not rise if we would just allow those three extra Thursdays? If we could complete towards the end of November the clause-by-clause, instead of in early November, would that be such a major problem? I would ask the government members to just reflect—obviously we're going to proceed with the agenda they've laid out today—but just reflect on that over the next week and maybe ask whoever is pulling the strings behind the scene here if we could not have just another three Thursdays—I think that would probably do it—to accommodate the people who really need to speak on this.

I will give you one example: On Monday I spoke to the Association of Counties and Regions of Ontario, and the AMO representation was there. AMO will be considering their deputation through their board meeting next week. They cannot make their presentation to us until they have cleared it with their board and their board meets next week.

They will not be in a position to make the presentation to this committee until after next Friday. So AMO, which represents the municipalities across this province, will not be able to make a verbal presentation to this committee. I think that's really sad because I think, from what I've heard from the minister last week, that this bill is going to have ramifications on the planning process in the province of Ontario.

On the one hand, the government has directed John Sewell to try to expedite the planning process; on the other hand, this bill, I think, is going to allow certainly for the possibility of slowing down the planning process by five months, half a year, perhaps more. The municipalities are just starting to twig to this fact. I think AMO is going to have something material to say on it

but they're going to be denied that possibility.

You can say: "Yes, that's too bad. It's too bad they didn't have a crystal ball and understand what our timing was going to be but, still, they can send in a written submission and we will all dutifully read their written submission." Well, it doesn't have the same impact. They want to be here to talk to us directly. That's really what democracy is about. If we say we'll read their submission, then why do we bother to have these deputations at all? Why don't we just cancel the committee, let everybody send in a written deputation?

Mr Mammoliti: That's not fair.

Mr David Johnson: It is fair, it is important. This is an association, a key association, that represents all the municipalities in Ontario and my guess is that individual municipalities may want to make deputations as well, but they're going to be denied that opportunity.

You look at other organizations such as UDI that has been mentioned. When the member talks about environmental groups, I suspect he's not including UDI within his definition of environmental groups; I'm not privy to his definition but I suspect he's not. But here is an organization that speaks for many workers who come under the wing of the UDI in the province of Ontario. Their livelihood may be impacted.

There are many organizations here. The Ontario Waste Management Association is not given an opportunity to speak. Their operation could be greatly impacted. How could we deny an organization with some 300 members, as I can recall, across the province of Ontario an opportunity to come forward? I think three extra Thursdays would do it.

1110

I just have to register my strong objection to the way this has worked out. Frankly, I think the chickens will come home to roost. They can ram it through, but then half the issue will not only be the problems of the bill, half the issue will be the way this whole thing has been handled. The unhappiness with it will grow exponentially and perhaps even more out of proportion with the problems that are in it. The government, in my submission, would be wise to take another look at this and allow a few more Thursdays and allow these people to come before us.

The Chair: Further discussion on Mr Mammoliti's motion?

Mr Wiseman: I'd like to raise a couple of points about the bill. It's unfortunate that we can't—we should move to the technical people. But if one refers to the report of the task force on the Environmental Bill of Rights that was published in July 1992—

Interjection: When?

Mr Wiseman: July 1992. I've had it on my bookshelf since then, I've talked to people about it since then. The blue section is the structure of the original

bill—am I correct?—that was sent out. In fact, it is close enough to the bill that is sitting here that the task force has endorsed the bill that's sitting before us. So to say that this bill is being sprung on people at the last minute is not in fact accurate. I would again just like to move along to having a technical briefing on this bill, so hopefully we will have a vote now.

The Chair: Further discussion?

Mr Bernard Grandmaître (Ottawa East): Saying that it's close enough to the bill is not acceptable, for the simple reason that when you're dealing with people's rights, I think you need to give people the opportunity to address this committee. This is not acceptable, being close enough. You're within the law or you are not; it's as simple as that.

As my Tory colleague pointed out, AMO is a very important organization representing, what, 660 municipalities out of 800. I think it's very important that these people be given an opportunity to address this committee. After all, this is why we do have committees at Queen's Park, to try to listen to the people.

Strangely enough, the government of the day for the last three years has been telling us that every piece of legislation that comes to the House has been widely distributed and it has gone out of its way to listen to people, yet when legislation is introduced, most people are very, very upset, especially with this bill. They're not being given the opportunity to be heard. I think to proceed without having an understanding that everybody should be heard would go against the principles that were established to have committees at Queen's Park.

I don't think this is acceptable. The advertising period is very, very short, and as was pointed out earlier, a great number of people will not be heard. I think it's very unfair to leave these people out and ask them to provide us with a written submission instead of appearing before this committee.

Mr Hans Daigeler (Nepean): What strikes me here is that, from the interventions by Mr Wiseman, he doesn't seem to quite understand the difference between a government task force and a legislative committee.

Mr Wiseman: I understand fully.

Mr Daigeler: A legislative committee is an all-party committee, and a government task force is obviously something the minister has set up to get some advice before he brings matters before the Legislature.

We had over the summer a very useful experience on the graduated licences, where it was a draft bill the minister put forward—it was not a bill yet; there were draft regulations—but rather than have a ministry task force, he had legislative committee hearings over the summer. The report isn't finalized yet, but most likely there will be mention that all members of the committee were very appreciative of this experience.

When we're saying that the public hasn't been

properly heard and apparently will not get a proper chance to be heard on this, we're talking about a legislative committee that brings its viewpoints from three parties' perspectives to a specific proposal of the government. Because of that, we feel very strongly that the time being given to the public here is totally inappropriate, and that's why we're so concerned about this motion coming forward from Mr Mammoliti.

Mr Mammoliti: Like Mr Wiseman, I would like to listen to the ministry at this point. If I'm the last speaker, I'll give up my time and we'll take the vote and just listen to the ministry.

The Chair: Is there further discussion? Mr Mammoliti has moved—

Mr Offer: A recorded vote, please.

The Chair: Mr Mammoliti has moved a motion which we won't read out but which is in front of all members. All in favour of Mr Mammoliti's motion?

Ayes

Fletcher, Lessard, Mammoliti, Mathysen, Wessinger, Wiseman.

The Chair: Opposed?

Nays

Johnson (Don Mills), Daigeler, Grandmaître, Offer, Tilson.

The Chair: Mr Mammoliti's motion is carried.

We still have one procedural item to deal with, that is, the researcher's duties that we want to clarify. The major question we have to clarify is whether we want a summary of all presentations to be prepared before the clause-by-clause. As members would note in Mr Mammoliti's motion, presentations must be before the committee by November 2 and clause-by-clause commences on November 4, which may give the research staff some difficulty. I would like some direction from the committee for the researcher to either prepare or not prepare a summary, and any other questions she may have.

Mr Offer: Just for clarification, would that be a summary of all the submissions which come before us, or on only those which have made public presentation?

Ms Lorraine Luski: It's up to you.

The Chair: That's a decision for the committee to make, Mr Offer.

Mr Mammoliti: I think it's reasonable to ask the research department to look at the written submissions as well and see whether they could be added.

Mr Wiseman: Just summarize the recommendations, and that would do it.

Interjection.

The Chair: I'm getting different messages here. Mr Fletcher?

Mr Derek Fletcher (Guelph): That doesn't give

much time for the people preparing this list, does it?

Mr Grandmaître: Are you in favour of the motion, or are you going to change your vote, Derek?

1120

Mr Fletcher: No. I'm just wondering about the time lines for preparing this. I'm looking at the workload on the person who is going to be preparing this.

The Chair: Perhaps we could hear from the researchers; it might help.

Mr Lewis Yeager: Lorraine has put together a day-by-day summary of how the process would move from this point, should you proceed. Your last day of public hearings would be October 28, you've proposed a cutoff day for written summaries of November 2 and you're going into clause-by-clause November 4.

To realistically assimilate the Hansard and the submissions from the public hearings and as many as possible of the written submissions—and hopefully people would expedite that and get them in quickly—a realistic cutoff date might be the Friday after your public hearings, or October 29, for material that is actually going to go into a summary. That would give you all of the material that came in from the hearings plus hopefully a good proportion of the written submissions which we could synthesize and categorize and put into perspective.

Undoubtedly, additional written submissions would continue to come in. A possibility might be that those be distributed to you for your consideration along with the summary but not be included into the summary, so that the summary can be a better summary essentially. That would mean some individual submissions would not appear in the summary but all members would have access to them.

A possible cutoff date of Friday, October 29, for material to go into the summary might give you a good summary of what's available to date and leave you less individual written submissions to pore through, but undoubtedly there would be a few of those remaining that you would have to consider individually. That's just one possible scenario you might want to look at.

Mr Mammoliti: I like the suggestions and I would certainly approve of that.

The Chair: Just to phrase that for us, we would—

Mr Wiseman: We'll go with what they just said.

Mr Mammoliti: A cutoff date of the 29th and copies of written submissions that come in after the 29th to be handed to all the members of the committee as well.

The Chair: Are members clear on what we are being asked to adopt?

Mr Grandmaître: That really means we're excluding people, preventing people from addressing this committee.

Mr Tilson: Just a question to Mr Mammoliti, who is suggesting, with respect to his—

Mr Wiseman: If you want to go for Tuesdays, we'll go for Tuesdays.

Mr Tilson: My question is with respect to receiving the written responses. After members read these written responses, will time be allotted by the government members of the committee in which we can come back to raise issues, perhaps with the ministry staff, of legitimate questions and proposed amendments? Will we have an opportunity to do that? If there are issues raised in the written discussions and amendments that may be proposed, will we have an opportunity to discuss and debate these matters in committee other than the clause-by-clause, because there could be substantial—

Mr Mammoliti: We've made it clear to both oppositions that we'd be happy to sit other days before November 4 and that we'd be willing to amend any motion and deal with any motion you want to bring forward to do that. I haven't seen anything to date in terms of a motion. I haven't seen a suggestion on your part. I would strongly recommend that you consider that as well. We'd be happy to sit, as we said, on Tuesdays. If those days were chosen to perhaps speak to the ministry, then so be it. That's still open to us.

Mr Tilson: I understand what you're suggesting. The difficulty I have with that is that the written submissions will be accepted, under the last paragraph of your motion, until November 2. There could be substantial written submissions that could be given to us on November 2, and that's hardly sufficient time for this committee to adequately deal with written submissions when it's possible that a whole slew of written submissions may be received at that date.

Mr Mammoliti: If you were listening to research a few minutes ago, you'll know that one of the recommendations they're proposing, something we agreed to on this side, was to hand those individual written submissions that have been forwarded after the 29th to every member of this committee. Whether you choose to read those written submissions is up to you. I know this side will read those written submissions. If you want to read them, that's up to you.

Mr Tilson: I understand what you've said; I understand those comments. The difficulty I have is allowing time for issues that may be raised. I have already expressed, as have all members of the opposition, our preference that we would rather hear oral submissions together with written submissions as opposed to simply reading a whole stack of written submissions. I'd rather listen to these people so that we can adequately ask them questions. However, I understand your tactics. I understand that you're saying that written submissions will be accepted up until November 2, and on November 4 we will start clause-by-clause, for one day.

My problem is that there may be proposals put forward in these written submissions which we may receive on or before November 2 in which there may be very constructive suggestions or amendments to this bill. If these people are going to take the time to write to us and they have until November 2, I want time to read those papers and I want an opportunity to be able to comment to them, perhaps ask legislative counsel to prepare amendments in response to those requests. To proceed on November 4, after receiving these written submissions on November 2, is hardly acceptable.

I'm asking if the chair of the government side of the committee would consider extending the time for these hearings until into November so that we would have an opportunity to at least give the people who've taken the time to write these comments the courtesy to adequately read them and possibly prepare amendments.

Mr Mammoliti: I can only respond by saying that perhaps Mr Tilson could look at what's happened up until now and reflect on the way he dealt with his concerns in subcommittee, as well as anybody else who was there, and think of how he could've perhaps prevented what he's complaining about at this point. If he had dealt with things differently in subcommittee, perhaps he would have had the time to deal with the things he's complaining about at this time. I'd ask him to reflect on what's happened, and tell him that I'm not willing to do anything other than my motion at this point.

Mr Tilson: I take great offence at the last comment when it was Mr Mammoliti who walked out of the subcommittee meeting the last time. He was the one who walked out. Mr Offer and I sat there and were prepared to debate this matter, and he walked out.

Interjections.

The Chair: Order. Mr Offer.

Mr Offer: I understand that what we're talking about is the suggestion made by Mr Yeager and Ms Luski with respect to the reporting mechanism. The way I see it is that under the Mammoliti motion, we're telling the general public, "You've got till November 2 to bring forward your presentations." I hear Mr Yeager and Ms Luski, quite understandably, saying, "The motion also says you're going to deal with clause-by-clause on November 4." They need some time, so they're asking to October 28 or 29.

Very briefly, I understand exactly why you have to take that position. You only have a certain amount of time, and there's only so much you can do in a certain amount of time. The problem I see is that of course this has been dictated by the Mammoliti motion, so if we eventually vote on it, I will be voting against that on the basis of your telling the public by the newspaper, "You've got till November 2" but not informing them that it's not part of the report.

1130

The Chair: Further discussion? If not, Mr Mammoliti has moved that the research officers will provide a summary of the oral and written submissions submitted to the committee by October 29, 1993.

Mr Offer: Recorded vote.

The Chair: Mr Offer has requested a recorded vote.

Mr Tilson: On a point of order, Mr Chairman: I question whether the resolution—

The Chair: There's a vote taking place and the vote is in order.

Mr Tilson: Prior to the vote taking place, I'm questioning—

Mr Mammoliti: Hurry up; I'm getting tired.

Mr Tilson: Do whatever you like, George.

The Chair: What's your point of order?

Mr Tilson: If you'll give me a chance, my point of order is that we have a resolution. We're going to be receiving public written submissions until November 2. The resolution is out of order, I would submit, because it's saying that the summations, those between October 28 and November 2 will not be dealt with. That's essentially what this motion's saying.

The Chair: I think it's a point of view.

Mr Tilson: It contradicts the first resolution.

The Chair: There's no point of order here; it's a point of view. All in favour of Mr Mammoliti's motion?

Ayes

Fletcher, Lessard, Mammoliti, Mathysen, Wessenger, Wiseman.

The Chair: Opposed?

Nays

Daigeler, Grandmaître, Johnson (Don Mills), Offer, Tilson.

The Chair: Mr Mammoliti's motion has carried.

MINISTRY OF ENVIRONMENT AND ENERGY

The Chair: We will then move to the next order of business of the committee, which is a briefing by the Ministry of Environment and Energy. As they are coming up here to make their presentation, though, I would like to inform the committee that the clerk and I attended the Board of Internal Economy on Tuesday last. At that meeting we discussed budgets and, as members might know, through a variety of circumstances we have a deficit position in this committee. We would like to discuss a further supplementary budget and the Speaker would be most happy with this committee if I could report that to them by some time in the middle of November, so I'm just asking that somehow we find some time to discuss the budget.

Good morning. If you'd like to introduce yourselves for the purposes of our Hansard recording, you can take the committee through this bill.

Mr Bob Shaw: My name is Bob Shaw. With me is Sharon Suter. We are both from the Environmental Bill of Rights office with the Ministry of Environment and Energy.

Ms Sharon Suter: Do you want us to leave any time for questions?

The Chair: If you could attempt it, that would be nice.

Ms Suter: We'll attempt it.

Mr Shaw: What Sharon and I will do this morning is go through the bill, highlighting all the major components of the bill and the functionality of the bill. This is an outline of the intended presentation.

We'll start off with the purposes of the bill. The bill sets out its primary purposes as being:

"to protect, conserve and, where reasonable, restore the integrity of the environment by the means provided in this act;

"to provide sustainability of the environment by the means provided in this act; and

"to protect the right to a healthful environment by the means provided in this act."

The bill then goes on to state the means by which the act provides to fulfil those purposes. It provides:

"means by which residents of Ontario may participate in the making of environmentally significant decisions by the government of Ontario;

"increased accountability of the government of Ontario for its environmental decision-making;

"increased access to the courts by residents of Ontario for the protection of the environment; and

"enhanced protection for employees who take action in respect of environmental harm."

The next part of the bill, part II, starts off and deals with the environmental registry. Sharon will do the section on the environmental registry.

Ms Suter: The bill establishes a new minimum level of public participation for the government of Ontario on decisions that are environmentally significant, those being policies, acts, regulations and instruments.

The purpose of the registry, as dictated in the bill, is "to provide a means by which notice of proposals and decisions that might affect the environment can be given to the public." The interpretation we've made is that our role is to then establish a functional electronic registry to ensure that all of government has access to that registry and to make that registry accessible to the public.

The bill also specifies the types of information that are to be made available to the public on the registry. There's additional information that we're opting to make available, things like general information on the bill. At proclamation there will be no requirement on

any body to have information available on the registry, so there'll be information on the bill, the regulations, the implementation and time lines for the government ministries, definitions that fall under the bill, a series of help screens.

The registry is being developed with a series of menus that you work through. The bill then requires the information on the statement of environmental values. First, a draft statement on the bill would be placed on the registry within three months of proclamation, at which time there will be public participation on that statement, and then a final statement would be placed on the registry, the full text of the final statement within nine months of proclamation of the bill.

Notice of proposals and decisions on environmentally significant acts and policies, regulations and instruments: The bill goes on to require the notice of third-party or applicant appeal on a class I or class II instrument, and we've opted to close the loop by also putting the decisions on those appeals on the registry. So there would actually be the proposal, the decision. If third-party appeal is initiated within 15 days of the decision being placed on the registry, the notification of the appeal would be placed on, and the outcome of that appeal would then be placed on, which closes the entire file. The final bit of information is the court action and then any decisions on the court action.

The time line, which is really the regulatory and legislative requirements placed on us to implement the environmental registry, is that at proclamation—which we are now assuming, as per the draft regulation which has been introduced under the bill, to be January 1, 1994—the environmental registry be functional, that it be accessible by the public and that we're putting general information on the bill to be available on the registry. So for anyone who wants the full text of the bill, the regulations, the interpretation, the definitions, that would all be available.

By April 1, 1994, draft SEVs by all 14 ministries, and then all ministries at that time—this is what we're hoping—will be capable of information upload into the registry. By July 1994 the Ministry of Environment is required to place notice of policies and acts on the registry, and any court actions which were initiated will also go on during that time frame.

By October 1994, all final SEVs by the impacted or prescribed ministries would be placed on the registry. The ministries' regulations and instruments and any notice of appeals on instruments and obviously decisions would go on in that time frame. By April 1995 policies and acts of the other impacted or prescribed ministries would be placed on the registry.

I have a set of overheads on how the registry is being proposed and how the interactivity of the menus will work which I'm not putting up, but I can if anyone's interested. If, for example, some member of the public

were looking to find a new active ingredient in a pesticide, right now the process would be that the ministry would review the consideration of whether that active ingredient should be introduced through OPAC, the Ontario Pesticides Advisory Committee. It would be gazetted for 18 months, during which time that active ingredient could be used, and then at the end of the 18-month period OPAC would re-review that active ingredient based on the comment they received.

How EBR would come into play in this particular example is that the proposal as shown here would be placed on the registry for 30 days, or whatever was deemed appropriate by the minister. At the end of the 30-day comment period the decision would be placed on, at which time it would then be free to be gazetted, so we're actually introducing this requirement prior to the gazetting requirement that's in place right now.

This is the type of information, if you work through the menus, that would be found on the registry. You'd be searching on information for the Ministry of the Environment and Energy, you'd be looking for instruments, you'd be looking for a pesticide and you would go through and you might find this example.

This is pretty close to the vision we have of what it would look like right now. Obviously, we will be working with different groups to get some input as to whether or not this information is adequate for their needs. We'll be looking at identifying the instrument type, which is the Pesticides Act, the legislative power under which this instrument's being issued, and then a layman's interpretation of what that means.

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I have to emphasize that at every stage through this there would be definitions of all the words, such as "instrument." If we talked about a proposed schedule, as we do in this one, schedules 1, 2, 3, 4, 5, there would be a help screen then to identify what a schedule 1 pesticide was. In this case I've just added this extra information that it's a pesticide to be used by the home owner. This is the type of information the registry would pull up for you.

The next issue with respect to the registry is the public access. The assumption we've made is that it would be accessible on line or dial-up to any resident of Ontario. We've been trying to use, where possible, any existing infrastructures rather than creating some new, standalone environmental registry process.

The access points that we're exploring right now are to make the registry available by dial-up. If someone had a computer and a modem in their home, there would be a local number as well as a 1-800 number. Anyone outside of the province of Ontario would obviously be paying their own long distance charges for accessing the registry.

Public libraries: I'll talk briefly about the Ministry of

Culture, Tourism and Recreation automation project that's been in place since 1991. It's a project that we've opted to piggyback on. It's a project that has automated public libraries to provide them with hardware to be made accessible to the public. I'll talk to that in a second.

College and university libraries: All of them in Ontario have a network called Internet, which is really a research tool that provides international access to a myriad of information, databases and technical information. By limiting and building a registry and restricting access on the Internet to Ontario nodes, we can limit college and university access to those in Ontario so that people can come in to the registry from those locations.

Government libraries that exist across the province that have GONet, the government of Ontario network, or the Ontario version of the Internet: We'll also be exploring using those as public access points.

Contact North I'll speak to again in a moment. It's a government of Ontario program under the Ministry of Education and Training. It provides us also with 100 additional fully or partially serviced sites in the province to make access to the public.

We've been working with the Nirv Centre. WEB, as many of you may know, is a network that is used quite often by the environmental interest community. Technically, it's feasible. We're in discussions right now with the Nirv Centre on making the registry a standalone menu item for that community, and then it would use its own communications in the WEB network to communicate and exchange information. Then there will be government-targeted access points like in the Ministry of Environment at 135 St Clair—on the first floor there's a public information centre; it's the perfect spot to put a computer and a modem—and Queen's Park. These things are all being considered right now.

The public libraries automation program was funded by the Ministry of Culture, Tourism and Recreation in 1991-92. It's expanding. Right now, there are 200 of the 1,200. There are 1,200 public library access points. They're not all in major centres. The 200 that have been automated right now are in major centres. I have a list of those if anyone would like to see them and the population that they serve. Of the 200 Ontario public libraries that are automated right now, 42 are in first nations libraries. It helps us in looking at some of the more remote areas and how we can provide access to some of the remote communities.

Under that program, the minimum equipment that was provided was a 386 computer—for those of you who know, that is very powerful—modem, printer and CD ROM drive. We're looking at storage and retrieval options so that this information can be rolled off the registry and stored, and in this case historical information also could be used by those libraries.

There's a training infrastructure, which is a really key point for us. The Ministry of Culture, Tourism and Recreation has Ontario public library service north and south. The staff in those establishments can go out and train. The librarians can help them, put signs up and help them understand what the Environmental Bill of Rights is all about. They wouldn't actually play a role in helping the public access, but they would simply show them where the equipment was and make sure that it was properly marked.

First Nations Technology Institute is also an infrastructure we would tap into where it provides training to the first nations librarians in whatever tongue is required. What it basically does is to provide us access to the libraries without any cost or administration.

The Contact North program is a government of Ontario program designed to remove barriers to learning and enhance opportunities for education and training at all levels. They don't actually conduct training; they facilitate training.

By looking at those Contact North sites that are already established there are 43 fully serviced sites, meaning they have full-time staff and they have computers and modems that are available to the general public as a training tool. We could make those available during the open hours of those centres for people to access using that modem into the registry.

This is the map that shows the distribution of those 200 public libraries in the province. What I don't have on there is the Contact North locations which go much farther north than that covers.

Mr Shaw: The second part of the bill also sets out the requirement for ministries to create statements of environmental values. These are the 14 prescribed ministries. The bill states the purposes of these values:

“(a) explains how the purposes of this act are to be applied when decisions that might significantly affect the environment are made in the prescribed ministry; and

“(b) explains how consideration of the purposes of this act should be integrated with other considerations, including social, economic and scientific considerations, that are part of the decision-making in the ministry.”

Sharon has mentioned the bill sets out a time frame that the draft of the statement of environmental values is to be made publicly available by the registry within three months of proclamation and that the final statement of environmental value is to be available nine months following proclamation. The bill requires that the prescribed ministries undertake a minimum of 30 days' consultation. On the statement of environmental values, we anticipate that this consultation period will be a minimum of three months.

The next part of part II of the bill deals with what needs to be placed on the registry. The first part of this

is policy and the bill very broadly defines policy as "a program, plan or objective and includes guidelines or criteria to be used in making decisions about the issuance, amendment or revocation of instruments." It then goes on to exclude acts, regulations or instruments to avoid confusion.

The bill requires that in the case of policy, the minister shall do everything in his or her power to give the public at least 30 days' notice before a proposal is implemented if the minister considers that the policy, if implemented, could have a significant effect on the environment, and the public should have an opportunity to comment on the proposal. The exception provided for in the bill to this is policies which are predominantly fiscal or administrative in nature.

The bill then goes on to deal with regulations and requires that for regulations the minister do everything in his or her power to again give the public a minimum of 30 days' notice before a proposal for a regulation is implemented if the proposal for regulation is under a prescribed act, and the minister considers that, if implemented, the proposal could have a significant effect on the environment. Again, there is the same exception for fiscal and administrative regulations.

The next component deals with instruments. The bill sets out that there will be three classes of instruments. It also sets out the steps that prescribed ministries are to follow in order to determine what instruments are to be classified and what class those instruments are to be placed into.

Class I instruments: The bill requires that a minimum of 30 days' notice be given to the public of a proposal for this type of instrument. For a class II instrument, it requires that in addition to that minimum 30 days' notice some other additional form of public notification is provided, and the bill speaks to approximately a dozen ways that additional public notification may be provided. For class III instruments, it requires not only the minimum 30 days' notification, but these are also instruments that require a public hearing.

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The way the bill, in combination with the first-draft regulation, is structured is it starts and it sets out prescribed ministries. So for ministries that are going to be prescribed for instruments, there are five ministries: MOEE, MNR, MCCR, MNDM and MMA. The second step is then that acts of these ministries are prescribed. The third step is that for each of those acts you have to walk through the procedure laid out in the bill to determine what instruments under those acts will be prescribed.

So, for example, for the Ministry of Environment and Energy, we are prescribed for the Ontario Water Resources Act and have gone through the exercise of determining what instruments will be described under that act, and in the draft regulation number 2 released

indicated instruments such as permits to take water will be prescribed.

On the other hand, a question has come up with regard to whether building permits could be prescribed and required to go on the registry. The act under which building permits are issued is administered by the Ministry of Housing. The Ministry of Housing is not a prescribed ministry for instruments, thus it has no prescribed acts, thus no prescribed instruments.

Mr David Johnson: Official plans or zoning amendments?

Mr Shaw: Those are the Ministry of Municipal Affairs, and what the Ministry of Municipal Affairs must do is that in 1998 it must examine the Planning Act and determine what instruments.

The Chair: Just a question of clarification. In unorganized townships where buildings are built with revisions to zoning orders, those building permits would therefore be prescribed where building permits in organized municipalities would not? Is that the case?

Mr Shaw: No, that is not the case. Neither of them would be.

The Chair: Why?

Mr Shaw: I don't want to quote the wrong act here.

The Chair: Maybe we could get it later.

Mr Shaw: No, it's okay. Building permits are issued under the Building Code Act. The Building Code Act is an act of the Ministry of Housing. The Ministry of Housing is not prescribed for instruments. Therefore, the Building Code Act is not a prescribed act. Therefore, there are no instruments such as building permits that will be prescribed and need to go on the registry.

The Chair: But in unorganized townships the mechanism is different. The mechanism in unorganized townships is that a building permit as such does not really exist, at least in my understanding. The way it is done is by an amendment to a minister's zoning order, which is a zoning order which would fall under the Planning Act, which would then fall under MMA.

Mr Shaw: And the decisions in that regard would be made in 1998 when the Planning Act is considered.

The Chair: Thank you.

Mr Tilson: On a point of order, Mr Chairman: My understanding of the information that we got from the clerk was that the Ministry of Housing is one of the groups.

Mr Shaw: The Ministry of Housing is prescribed. It is prescribed for the development of a statement of environmental values and it's prescribed for the placement of new policies or acts of environmental significance to go on to the registry. It is not prescribed for the purposes of instruments.

Mr Offer: As we're on this matter, I see that the Ministry of Finance is not there. I believe the levy on

beer cans comes out of the Ministry of Finance. Is that correct?

Mr Shaw: I'm not sure.

Mr Offer: I believe it's a taxation matter. So that would not fall under the EBR?

Mr Fletcher: Environmental concerns.

Mr Offer: No.

Mr Shaw: The Ministry of Finance is a prescribed ministry. It's one of the 14, but it is not prescribed for instruments.

Mr Wiseman: It was in CCR.

Mr Offer: I don't think so.

Mr Tilson: Sure. That's Finance.

Mr Offer: That's Finance.

Interjection.

Mr Offer: It's a tax.

Mr Tilson: That's exactly how it came in.

Mr Offer: So the levy on beer cans wouldn't necessarily fall under that prescribed—

Mr Shaw: If it was the Ministry of Finance, if the levy on beer cans was brought in by a regulation—I'm assuming—then no, it would not appear on the registry as the current scheme sets it out.

The bill also introduces third-party appeals with regard to both class I and class II instruments. The way in which the appeal process will work is, as Sharon has indicated before, both a proposal for an instrument and a decision regarding the instrument will be placed on the registry. The public then have 15 days in which they may seek to appeal that decision after it has appeared on the registry.

The appeal board that will hear their application to seek leave to appeal is the same appellant body that would normally hear the appeal on the instrument. In the case of the Ministry of Environment, that's the Environmental Appeal Board. That appellant body will make a decision whether to grant leave to appeal or not grant leave to appeal. If it grants leave to appeal to a third party, the instrument is stayed and is no longer valid unless the board rules otherwise and the appeal will move on to a hearing.

In order to obtain leave to appeal as a third party a decision on an instrument, two conditions must be fulfilled, and the appellant body is the body which makes the decision on these. One is that there is good reason to believe that no reasonable people having regard to relevant law and any government policies developed to inform decisions of that kind could have made the decision and that, having made the decision, that decision could result in significant harm to the environment.

Mr Offer: Is there any thought around the word "significant"? It appears in a number of places.

Mr Shaw: The bill sets out four statements to assist a minister in determining what is significant with respect to the environment. These are not quotes. I have taken the liberty of paraphrasing slightly off the bill. Essentially what it speaks to is the extent and nature of measures that will be required to mitigate or prevent harm to the environment which could result from a decision. It speaks to the extent of the impact of the decision. It speaks to the nature of private or public interests, including government interests, that are involved in the decision and any other matter the minister may consider relevant.

I'm going to turn this back over to Sharon. The next part of the bill discusses the creation of the Environmental Commissioner.

Ms Suter: The Environmental Commissioner's office was proposed in the task force report. I wanted to just backtrack and look at the considerations the task force was faced with.

Through the consultation process, the concerns of the stakeholders were brought forth that a bill such as this would need to be enforced and how would you enforce that the EBR would be handled consistently across government. How would the public be able to know whether or not the bill was being used or abused if a minister had inappropriately used discretion, if a minister had not provided for the public participation rights, if a ministry had not responded to a request for review or request for investigation in a timely manner, and how could the public be assured of an independent, objective and knowledgeable oversight of the bill?

Given those concerns of the stakeholders, the task force reviewed several options as to how this could be enforced or managed. One of the options they looked at, which were detailed in the task force report, was looking to the media to publicize where a minister abused or did not abide by the legislative requirements under the bill. The difficulty there is that you're always competing with the daily priorities of the media and the fact that some other big issue may come up and these things would never be brought to the light of the public.

There was another option, to use the standing committee, through the legislative process, to have the standing committee established and monitor and investigate a minister's compliance. Another option was ministerial statements, where you left it to the onus of the minister to bring forth how he or she used public participation in coming to environmentally significant decisions and how the discretion was used.

Another was the judicial system, where citizens could be left to apply to the courts in an attempt to overturn decisions by a minister or a ministry to do something under the bill, or the ballot box, where poor environmental considerations by a government would be obviously illustrated by the public through voting. The final consideration was establishing an Environmental

Commissioner, and this was the option that was recommended by the task force.

Once the task force introduced the draft of the Environmental Bill of Rights, it was supported through public comments that were received, but the emphasis seemed to be on a need for an independent and knowledgeable commissioner, someone who could really oversee and maintain the independence. This was something that, I think you'll see, is changed from the draft to the final. That was emphasized.

The final bill now shows the Environmental Commissioner, under part III of the bill, appointed by the Lieutenant Governor, staff salaries commensurate with that of the Ontario public service. The annual budget was to be established and approved by the Board of Internal Economy. The board has the authority under this bill to direct orders to the Environmental Commissioner's office to modify a budget or to control the size of the staff. Right now, we're looking at establishing the Environmental Commissioner, at proclamation, with a staff of four and growing to 15 at maturity.

The Chair: Thank you. The members are being called for a vote. The committee will reconvene this afternoon at 3:30 sharp to hear from the Canadian Institute of Environmental Law and Policy, followed by Morgan Gardner, Marsha Valiante, Concerned Citizens of Renfrew County and the Conservation Council of Ontario. Thank you very much.

The committee recessed from 1203 to 1530.

The Chair: The standing committee on general government will come to order. The purpose of the committee this afternoon is to deal with Bill 26, An Act respecting Environmental Rights in the Province of Ontario, and the purpose of the committee this afternoon is to deal with presentations from the public. Our first presentation will be from the Canadian Institute for Environmental Law and Policy. If Dr Mark Winfield and Anne Mitchell would approach, you may just have a chair right there.

Mr Mammoliti: I'm wondering, Mr Chair, if just before the presentation we could do a small house-keeping item, if possible, if I could have some consent from the Liberals and the Conservatives to perhaps talk about an issue the House leaders have asked me to bring up here.

The Chair: I would just point out, Mr Mammoliti, we are in a very tight time frame.

Mr Mammoliti: I realize that, and I don't think it'll take very long. Perhaps it might be better to deal with—

Mr David Johnson: Do we know if all the deputies are here?

Clerk of the Committee: We have two of them so far.

Mr Wiseman: Why don't we take five minutes at the end?

Mr Mammoliti: Perhaps it might be wise to take five minutes at the end of the day to deal with it.

The Chair: Do you want to deal with the issue now?

Interjections.

The Chair: What is it? Do we have a motion, Mr Mammoliti?

Mr Mammoliti: I would prefer that we do it as a consensus, Mr Chair.

The Chair: We still require a motion, whether there's consensus or not.

Mr Mammoliti: The House leaders seem to be talking now about extending time limits in committee. They're still talking apparently, and they've asked me to reconsider the part of the motion this morning that talked about advertising and to drop the advertising until they can deal with it.

The Chair: Will you make a motion then to drop the advertising?

Mr Mammoliti: I'd certainly like to at this particular time, if possible, yes.

The Chair: Is there discussion on that motion by Mr Mammoliti to withdraw the advertising portion of the motion this morning?

Mr David Johnson: I'm not sure if I understand the consequences. Is it now the suggestion we don't advertise or what?

The Chair: That's what the suggestion is.

Mr David Johnson: Frankly, I thought it was going to be embarrassing to advertise because people wouldn't be able to make deputations, but at least they could still make written submissions and the advertising would at least, if it was allowed to go forward, allow them that possibility. So even though I think the advertising is going to be somewhat embarrassing, still it fulfils a little bit of a purpose at any rate, and I think on that basis I'd have to disagree with the motion that apparently is coming forward.

Mr Mammoliti: So you disagree with dropping the advertising?

Mr David Johnson: Yes.

Mr Mammoliti: Then at this particular time I would just go back to status quo and keep it at that. We'll keep the advertising.

The Chair: Thank you. I apologize for our brief little procedural skirmish.

CANADIAN INSTITUTE FOR
ENVIRONMENTAL LAW AND POLICY

The Chair: You have been allocated 30 minutes by the committee for your presentation. Often presenters like to allow some time for conversation with the members following the presentation. So you may introduce yourselves for the purposes of Hansard, your

position in the organization, and then you may begin.

Ms Anne Mitchell: Good afternoon to all of you. My name is Anne Mitchell. I'm the executive director of the Canadian Institute for Environmental Law and Policy. I have with me Dr Mark Winfield, who is CIELAP's director of research and has prepared our submission on Bill 26 that we're going to share with you this afternoon. We thank you for the opportunity to meet with you.

I would like to begin by saying a few words about CIELAP and its work. CIELAP was founded in 1970-71 as the Canadian Environmental Law Research Foundation. CIELAP is an independent, not-for-profit professional research and educational institute committed to environmental law and policy analysis. CIELAP's mission is to provide leadership in the development of environmental law and policy which promotes the public interest and the principles of sustainability, including the protection of the health and wellbeing of present and future generations and of the natural environment.

We welcome the opportunity to address the standing committee on general government regarding Bill 26, the proposed Environmental Bill of Rights. Environmental bills of rights have been introduced as private members' bills in the Ontario Legislature on a number of occasions over the past several years. There has been strong support for the concept among the environmental community in the province. In fact, in the very first edition of *Environment on Trial*, which is this book here, a project of our organization and CELA published in 1972, J.A. Kennedy QC, the chairman of the Ontario Municipal Board from 1960 to 1972, said:

"Basic changes are needed in our planning procedures, indeed in our lifestyles, if real environmental crisis is going to be avoided, but even now we have the right to a clean and attractive environment.

"This book outlines the steps now available to protect these rights, limited though they be. Beyond this, however, is the long-term goal of an Environmental Bill of Rights for Ontario to ensure maximum citizen participation in the achievement of a quality environment."

That was written over 20 years ago. These comments have been reprinted in the third edition of *Environment on Trial*, which was published last month in Ontario.

CIELAP has long supported the concept of an Environmental Bill of Rights for Ontario and therefore strongly supports the proposed bill. We strongly endorse the principles of strengthened public participation in decision-making and increased political accountability.

We are particularly supportive of the elements which propose to establish an office of the Environmental Commissioner, create an environmental registry, provide for notice and comment periods prior to the implemen-

tation of new instruments under the Environmental Protection Act, expand standing to appeal instruments issued under the Environmental Protection Act to the Environmental Appeal Board, permit citizens to ensure that environmental statutes are enforced and remove limits on the pursuit of common-law public nuisance actions.

Our comments this afternoon will be focused on the role of the Environmental Commissioner and how it can be enhanced, applications for reviews and investigations and how they can be strengthened and improved, the appeals process and the whistle-blower's protection clauses of the bill.

I'm now going to ask Dr Winfield to review some of those comments and recommendations, which are in our submission.

Dr Mark Winfield: As Ms Mitchell pointed out, we're going to focus our comments this afternoon on four specific topics: the role of the Environmental Commissioner; the provisions of part II of the bill related to appeals of class I and II instruments—those will be sections 41 and 42 of the bill; part VII of the bill as it relates to whistle-blower's protection; and also the elements of the bill related to the applicability of judicial review to the bill.

Beginning with the office of the Environmental Commissioner, we regard this as one of the most important and innovative aspects of the bill and strongly support in principle the notion of creating an office of the commissioner. However, we believe that there is a need for some substantial changes to the mandate of the commissioner's office in order for it to be able to fulfil the functions which is intended to be able to carry out effectively.

In particular, we believe that the clauses of the bill related to the mandate of the office—this would be section 57 of the bill—need to have a number of amendments. In particular, the Environmental Commissioner should be given an explicit mandate to review the consistency of ministry policies and actions with the statements of environmental values prepared under the bill. In addition, under the commissioner's reporting duties, the commissioner should be required to report on the same to the Legislature as part of his or her annual report.

In addition, we believe that the commissioner's office should be given a mandate to undertake reviews of legislation, regulations, policies or issues in response to requests from members of the public. This obviously would provide for a much more dynamic role on the part of the Environmental Commissioner and would also affect elements of part IV of the bill.

We also believe that the commissioner's mandate should be expanded to include educational activities in relation to the bill, and also the commissioner should be

explicitly permitted to assist members of the public in participating in decision-making processes using the bill. This would again be principally an educational function.

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In addition, we believe that the powers of the commissioner's office must be expanded in a number of specific ways. This would relate to section 60 of the bill. In particular, we believe that a "cooperation" clause should be added to the bill. This is a clause which would simply require that officials of the Ontario government cooperate with the commissioner in assisting him or her in the execution of his or her duties. A similar clause already exists under the Ontario Ombudsman Act, and we would recommend that the language of the Ombudsman Act be simply imported into section 60 of the EBR.

In addition, we believe that the commissioner should be given the power to engage the services of professional or expert individuals from time to time to assist in the execution of the duties of the office.

With respect to sections 41 and 42, these relate to appeals of class I and II instruments to the—normally, under the Environmental Protection Act, it would be an appeal to the Environmental Appeal Board. With respect to section 41, this is a new innovation in the sense of granting leave to appeal such instruments at all to third parties, and we note that the leave will only be granted where "there is good reason to believe that no reasonable person...could have made the decision" in question. Legal advice on the interpretation of this phrase indicates that what this means is that a third-party intervenor—that is to say, a household or a non-governmental organization—would have to be able to prove that no reasonable official could possibly have issued the instrument in question in order to obtain standing to appeal an instrument to the Environmental Appeal Board. We believe that this test is so onerous that it would be virtually impossible to overcome.

So, in effect, the bill would be granting a right to appeal in section 38 but would then be taking it away through the language of section 41. We would suggest that this limitation be removed and, in addition, such an approach would be consistent with the approach to third-party appeals contained in a number of British Columbia statutes and in the recently enacted Alberta Environmental Protection and Enhancement Act.

With respect to section 42, we believe this relates to stays of decisions under appeal. We believe that this clause could have the potential to undermine certain important aspects of the 1990 Bill 220 amendments related to the effect of director's orders under the Environmental Protection Act. We would like to see this clause amended to ensure that it does not undermine the intent of the Bill 220 amendments related to director's orders, in particular the notion that director's orders would have to be carried out regardless of whether or

not they're under appeal.

With respect to part VII of the bill—these are the whistle-blower's protection clauses: This part of the bill would repeal section 174 of the existing Environmental Protection Act. We regard this as a fairly serious issue because we believe, on the basis of the legal advice which we have received, that doing so would take away the possibility of prosecutions being undertaken under the Environmental Protection Act for employee harassment by employers which currently exists. Under the existing law there are two recourses. Harassing an employee for reporting environmental wrongdoing on the part of a company is a distinct offence under the Environmental Protection Act; in addition, an employee would have the option of going to the Ontario Labour Relations Board and seeking redress there as well.

The wording of the EBR takes away the possibility of its being a distinct offence under the Environmental Protection Act to harass an employee. We would regard this as an unacceptable outcome because it would reduce the existing rights of employees. We feel that the bill should be amended to address this problem or, failing that, the existing section 174 of the Environmental Protection Act should be allowed to stand as is.

Finally, with respect to judicial review—this relates to section 118 of the Environmental Bill of Rights—as currently written, there is only availability of judicial review of the implementation of the bill in relation to part II of the bill, which is the process for establishing new instruments. We believe that the wording of the current subsection 118(2), which allows for judicial review of actions under part II of the bill, should be applied to the whole bill with the exception of four sections. These would be section 11, which relates to the effects of statements of environmental value; section 14, which relates to factors in determining the effects of proposals on the environment; section 35, which is a requirement that the minister consider comments received in response to the notice-and-comment provisions of the bill; and section 67, which is the determination of whether a request for review warrants a review.

We regard each of these four sections as dealing with the substantive content of environmental policy and believe that those should remain in the political as opposed to judicial rounds and therefore should be insulated from the possibility of judicial review, but otherwise the possibility of judicial review should be available for the remainder of the bill.

We'd be happy to respond to any questions you might have regarding the bill or regarding our proposals for amendments to it.

The Chair: Thank you. I'm sure the members will have some questions. We will do the questions in rotation, starting with the official opposition, and I will divide the time evenly among the parties.

Mr Offer: Thank you for your presentation. I note that in your presentation, you haven't dealt with all of the issues that are in your written submission. I think you've covered important issues not only through the oral presentation but that some of those areas are equally important.

One question I would like to ask you deals with this opportunity for the general public to question or ask the ministry to review a particular act or policy. This is an area which has been much ballyhooed, and I'm wondering if you can share with the committee your thoughts about the structure and process that is in place in the bill.

Dr Winfield: What we are actually proposing is something of a restructuring of those elements of the bill. As the bill is written, what would happen is that a request for a review would be essentially routed through the office of the commissioner and then passed on to the relevant ministry, and then it would be up to the relevant ministry to decide whether the request warrants a review and then to undertake the review.

We have some concerns about that structure. In fact, what we are proposing would be a change to part IV of the bill such that—I mean, the availability of individuals going to a minister and requesting a review should remain in place, but in addition, what we're suggesting is that the Environmental Commissioner be given a mandate to respond directly to requests from the public and that the Environmental Commissioner undertake reviews of legislation, policies, events, whatever, himself or herself. This is somewhat different from what's proposed here, but there are precedents for such a structure in Canada; I can detail them in some detail if you'd like me to.

Mr Offer: So your proposal for the area of review is that if the individual wishes to ask a ministry to review a policy, they can now do that through the commissioner and the commissioner sends on the individual's request. You are saying that the commissioner should in fact incorporate that as his or her own request.

Dr Winfield: Even somewhat differently: What we envision would be the commissioner's office doing the actual review of the policy itself and delivering a report to the public and the Legislature on the statute or the regulation or the policy or the practice which is under review. In effect, the commissioner would be given a mandate to investigate and conduct substantive reviews of the content of statutes or whatever in response to a request from the members of the public.

We think this would provide for a much more thorough review than would be the case if the ministry itself undertakes the review, because then it would be reviewing its own statutes or policies or practices. We think having a third party undertake the review, the Environmental Commissioner, would be a much more

effective approach. As I say, there is a precedent for such a structure in Canada. It actually existed in Alberta, called the Environment Conservation Authority. It was established in 1970, and the historical record demonstrates that that approach was highly effective and very popular.

Mr Offer: Does the Environmental Commissioner under the bill have the teeth it should have?

Dr Winfield: No. We have made a number of suggestions related to both the commissioner's mandate and the commissioner's powers. In particular, in addition to the review function I just outlined to you, we've also suggested that the commissioner be given an ongoing mandate to review the consistency of ministry policies and practices with those statements of environmental value which they're required to prepare, and to report on that to the Legislature each year.

In addition, in terms of powers, we believe, as I said, that what's called a cooperation clause should be added to the bill. That would be a clause which essentially requires that officials of the government cooperate with the commissioner in the execution of his or her duties; in effect, be required to provide information and assistance and that kind of thing.

1550

Mr Offer: Is there a precedent for that type of cooperation clause?

Dr Winfield: Yes. As I outlined in my presentation, there is such a clause in the Ontario Ombudsman Act. We've actually cited the specific section of the Ombudsman Act in our presentation. We would suggest that might provide some good language to incorporate into section 60 of the EBR.

Mr Offer: Dealing with the statement of values, do you have any concerns with respect to the wording now in the legislation? I'll preface everything by saying that I've always taken the position that those statements should be before the committee so we can actually see what these words are, but in principle, is there some concern about the legislation in terms of this whole question of statement of values?

Dr Winfield: As we outlined in our presentation, we'd prefer they were called something else: statements of environmental principles or statements of environmental goals or environmental purpose or something like that. Beyond that, I think what you need is some structure which will produce some kind of interaction between those statements of values and ministry behaviour. This is the reason we're suggesting that the commissioner be given a mandate to review ministry behaviour in relation to those statements of values so that their behaviour can be reviewed against what they've said—how they've made this statement of principle, if you like, of how they're going to behave on environmental matters—and provide a report to the

Legislature each year on how they have performed in relation to those statements.

I think that's probably the best way to approach it. The only other way you could do it would be to allow for judicial review of ministry consistency with that statement of environmental values. I think that would open the door to a wide range of problems in terms of the role of the judiciary in environmental policymaking.

Mr Tilson: Thank you for your comments this afternoon, particularly on such short notice to come to make your presentations. We will be looking forward to reviewing them in more detail.

One of the concerns I have expressed in the past, which I'd like your comments on, is what I perceive as the discretion that's being allowed to a minister to do certain things. I'm getting to the whole issue of the teeth of the bill. The bill says that certain things should be done. You could flip through, not every section, but many sections, sections 15, 16, 26, 29, 30, the one you mentioned, and there are a lot of words where it says "in the minister's opinion," "if the minister decides."

It even gets to the discretion of the court. In section 90, for example, "The court may stay or dismiss the action if to do so would be in the public interest," and in subsection (2), "In making a decision under subsection (1), the court may have regard to environmental, economic and social concerns and may consider" a number of other things; in other words, if it's too costly to a government, I suggest. I'm not too sure what that means.

One of the criticisms that have been made of this bill at the very outset is that it's like the Ombudsman Act: When the Ombudsman came in, everybody was all excited because a lot of our concerns were going to be saved by the Ombudsman, but, with due respect to the Ombudsman, I'm just saying that office has not lived up to the requirements, perhaps, that we had all hoped.

With the discretionary powers that are to be given to the minister as opposed to mandatory powers, with the discretion that's been given to the court to—I don't know whether that means, but I believe it does, that someone can even say, "It's too costly, and therefore we're going to stay it." Have you addressed your thoughts to those concerns?

Dr Winfield: Yes. There are a number of dimensions to your question, and it can be answered on several levels. I think part of what underlay the bill was a struggle in the minds of the drafters with respect to the appropriate role of mechanisms of political accountability versus mechanisms of judicial accountability, in the sense that they were concerned that if they went too far in using mandatory language in the bill, it could have the potential to invite extensive litigation under the bill which, among other things, would both be costly and complex in itself but also

would have the potential to move certain important decisions related to environmental policy out of the political realm and into the hands of the judiciary. As we've outlined in our proposal and in other places, we would have some concerns about that as well.

On the other hand, in terms of the direct language of the bill, I agree with you that in some ways there is too much discretion. Our proposal with respect to the application of judicial review under the bill in relation to how section 118 of the bill should be applied attempts to address that in a fairly direct way in the sense of providing for a greater scope for the potential of judicial review under the bill. In addition, what we are suggesting is—

Mr Tilson: If I could just interject, in other words, the way you read the bill now it means that if the minister takes no action in this discretionary power they have, tough beans.

Dr Winfield: Yes, and this is part of the reason we are arguing for a strengthening of the role of the commissioner's office as well. The penalty for failure to act would be a sanction from the commissioner, in the sense that the government would be embarrassed by the commissioner's reports to the Legislature or investigations saying that ministers have failed to perform their duties appropriately under this bill.

In effect, it does reflect the decision to opt for a mechanism of political accountability as opposed to a mechanism of judicial accountability. In general, we support that principle, but what we are saying is the mandate of the commissioner's office is going to have to be strengthened quite significantly for it to be able to perform that function adequately.

Mr Wiseman: I have a number of questions. On page 14 you say, at the bottom, "While a well-designed system of administrative procedures may greatly enhance public awareness and understanding of environmental decision-making, the system also has the potential to introduce significant delays in the implementation of new environmental measures." Could you elaborate on that for me, please?

Dr Winfield: What we had in mind again was particularly in relation to parts II, IV and V of the bill.

With respect to part II, the attempt to provide a structure of notice and comment procedures for new instruments and new proposals does involve a significant formalization, in fact legalization, of the process for developing and implementing new instruments and it mandates a number of bureaucratic steps which it would be required to follow. There is the potential, in doing that, if the implementation of that system is not well designed, that it could introduce significant delay.

With respect to parts IV and V of the bill, the request for investigations and the request for reviews, the request for reviews parts in particular are quite complex.

They lay out the procedural steps in great detail, what may in fact be excessive detail, and there again there is a potential for delay or difficulties in dealing with these aspects of the bill, particularly on the part of members of the general public.

We have suggested that the committee might want to think about how those aspects of the bill might be tidied up somewhat, made more simple and more user-friendly.

Mr Wiseman: You say the Environment Council of Alberta is the only precedent in Canada for an office or body along the lines that's proposed in the Ontario bill. Also, you mention that some of these instruments are in the Environmental Management Act, the Waste Management Act, the Pesticide Control Act, the Water Act and the Public Health Act of BC. That's in your footnote. Could you perhaps do some kind of quick comparison in terms of what is in those bills that make them particularly successful that may or may not be in this bill?

Dr Winfield: The reference to the Alberta Environment Conservation Authority and the reference to the BC legislation are with respect to different aspects of the EBR. The reference to the BC bills and the Alberta Environmental Protection and Enhancement Act is in relation to the appeals provisions related to the implementation of new instruments, the class I and II instruments, in sections 38 to 42 of the bill.

What we are saying there is that the normal practice in Alberta and British Columbia is to allow third-party appeals, that is to say appeals by members of the general public, of the issuance of things like certificates of approval to an environmental appeal board without the limitation which is imposed by section 41 of the draft Ontario Environmental Bill of Rights. There is no such limitation in the BC or Alberta legislation.

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My comment with respect to the Environment Conservation Authority was in relation to the office of the Environmental Commissioner. As I say, the Environment Conservation Authority is the only actual existing, operationalized precedent for an office of the type which is being proposed here in the EBR. What I'm suggesting is that certain aspects of the Environmental Commissioner's mandate proposed here be made fairly similar to those given to the Alberta Environment Conservation Authority, because all the historical record related to the Environment Conservation Authority indicates that it was a highly effective and extremely well-received office.

Mr Wiseman: With that in mind, in terms of buy-in, have all the communities in Alberta bought into that kind of activity, including the business community, the developers and all that?

Dr Winfield: Yes. I don't want to digress too much.

The story of the conservation authority is somewhat complex, because there were significant changes made in this mandate in 1977 which reduced his discretion. But during the period in which it had this fairly wide freedom of action, the authority acquired a remarkable reputation for integrity and honesty and thoroughness of examination of issues and responses to members of the public and also interested economic concerns as well. Everything I've ever heard about it has been positive, and this was a significant part of my doctoral thesis. I did a lot of interviewing around it. Quite honestly, in all the interviews I did in Alberta, I never heard a negative word about the operation of the conservation authority.

Mr Wiseman: Perhaps you could pass along some of that information to us on the committee so that we could read it.

Dr Winfield: No problem at all.

The Chair: Further questions? We have about a minute.

Mr Tilson: Mr Chair, I have no further questions. We are finished with the questioner.

The Chair: We appreciate you coming before the committee today. Thank you very much.

Ms Mitchell: Thank you very much for your time.

Mr Tilson: If I could ask the committee before we proceed with the next delegation, my understanding is there is unanimous consent by the three parties to allow Mr Mammoliti to proceed with a motion without debate.

Mr Mammoliti: I think the motion was put forward earlier, if we could bring that motion back up again without any debate.

The Chair: The motion, as I understand it, is that the committee does not advertise on Bill 26. All in favour? Carried.

Mr Mammoliti: Amazing.

MORGAN GARDNER

The Chair: The next presentation will be from Morgan Gardner. Good afternoon and welcome to the committee. The committee has allocated 30 minutes for your presentation, and the members always enjoy using some of that time to ask some questions. You may begin when you're ready.

Ms Morgan Gardner: First of all, I'd like to thank the committee for the opportunity to speak today. I'd also like to say that I'm speaking as a citizen and as a user of this bill.

I'd also like to outline the areas I'd like to cover in this presentation. First, I'd like to give a brief background on my participation and involvement in the bill as a citizen and as a member of the environmental community, and also indicate my personal position on the bill. Secondly, I'd like to articulate my understanding of who the environmental community is. Third, I'd like to talk to the issue of why I feel environmental

rights are important. Fourth, I'd like to present my understanding of environmentalists' position on the bill. And fifth, I would like to indicate some of my concerns and amendments that I would suggest be made.

My background: My involvement with the proposed Environmental Bill of Rights, now Bill 26, began the summer of 1991. Since that time, I have followed the development of this bill and have been active in issues surrounding it. This involvement has been as a citizen and board member of a local grass-roots group in London, Ontario, called the Thames Region Ecological Association. My involvement has also been as a board member of the Ontario Environment Network, as a researcher and as a graduate student at the University of Toronto in its PhD program and, lastly, as an organizer. As I've just recently moved to Hamilton, my present local group affiliation is with the Hamilton chapter of the Conserver Society, although today I'm speaking on my own behalf and experience as opposed to on behalf of any particular organization.

In this forum I would like to articulate my overall general support for Bill 26. I believe that for citizens and local environmental community groups, this bill is needed and can play an important role within the larger context of responsible environmental protection and stewardship within Ontario.

Finally, within this context of support, I also want to state that I have some concerns with this bill and would like to see some amendments and implementation issues considered by this committee.

My understanding of the environmental community: I've been formally involved in the environmental community for the past seven years. Before that, my involvement has been in an informal way, around my personal lifestyle choices.

As a member of the environmental community in Ontario, I am clear that the bill has a strong and growing constituency within this community.

My experience and understanding of the environmental community is that it is heterogeneous as opposed to homogeneous. It is a broad-based community composed of a diverse array of over 600 groups with differing backgrounds, perspectives, strategies, philosophies and objectives. The size of these groups varies from five members to over 300,000 members, probably with an average membership of between 50 and 100 citizens.

There are also differing levels of involvement: people who participate in crisis situations once in a while to those who really are active on an ongoing, daily basis. There are those who focus just on the household level, some others on workplace, some at the municipal, regional and provincial levels.

The scope of issues dealt with by these groups ranges from community-based agriculture projects to

overseeing waste management programs in their communities, from energy conservation to water quality issues in the Great Lakes, from Bike to Work Week to Cloth Bag Day to forestry practices in northern Ontario. In this sense, we are talking more about a matrix of environmental communities as opposed to an environmental community.

My experience also tells me that the overwhelming majority of these communities are semiorganized, non-profit, locally based, volunteer and community-driven. Most importantly, they are composed of people who are concerned about the wellbeing and health of their community, their family and the surrounding physical environment because of contamination, degradation and lack of responsible protection and conservation in their surrounding communities. Without doubt, the most predominant aspect that composes the environmental community or communities is concerned, everyday local citizens who want to participate in safeguarding the quality of their environment.

Why do I think environmental rights are important? My understanding is that rights are a controversial issue, whether we are speaking of human or environmental rights. In the issue of rights, as with almost any issue, there are limitations as well as possibilities to consider. Given the brevity of this presentation, I would like to quickly identify some of the importance and possibilities of environmental rights. Some of their limitations I will address in my last agenda item.

The points I would like to elucidate are as follows. The first one is that the struggle against environmental degradation is in part a conceptual battle, and environmental rights work to address this battle. What I'm trying to say is that how we define and perceive the environment is a conceptual issue; that is to say, how we talk about the environment, whether we talk about it as a commodity or whether we talk about it as a living ecosystem. The language and visibility we give the environment in policies and acts which inform actions are important.

How, as a citizen, can I hold a public official responsible to a certain vision if there is not acknowledgement of that vision in the policies and laws which govern the society I live in? Therefore, I feel environmental rights express intent and articulate a collective valuing of nature, its worth and deep interconnection to human health and wellbeing.

It is also a conceptual issue with regard to how, as a society, we conceive of or understand the role that citizens play in environmental protection. I believe that environmental rights can formalize the roles and responsibilities of government and also give citizens clear recognition of entitlement to certain rights.

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I want to address how I think this present bill deals with some of these aspects. The rights within this bill

provide, first, an affirmation and formal recognition of who we are—and when I say “we,” I’m talking about the environmental community or communities. So why does it affirm and give a formal recognition of who we are? It does because it acknowledges that we are citizens who want involvement, voice, accessibility and say in how government makes decisions affecting the environment.

Secondly, this bill of rights articulates important aspects of what we are striving for, mainly a clean and healthy environment for ourselves and future generations, a government and system that is environmentally responsible and accountable, and also a recognition of the inherent value of the natural environment.

In addition to some of the conceptual issues the bill deals with, rights are also more than abstract statements of values or intentions, but are also concrete and practical tools to be used by rights holders. Today I’m talking about rights holders as citizens and local citizens groups. That is to say, beyond statement of values, they need to provide concrete mechanisms to facilitate and enforce these rights in a fair and equitable manner.

I believe this bill establishes some of these concrete mechanisms and I’d like to outline some of them. As far as rights to greater transparency and accountability of decision-making, I think the bill does provide a number of mechanisms. First is getting notice of proposals through the environmental registry system. Lots of proposals are decided upon within government of which the public has no clue that their proposal is even on the table or is even going to be decided upon. This is a lot of our struggle as citizens and as grass-roots groups and this bill certainly acknowledges that difficulty and barrier. I think the creation of a registry helps deal with some of that problem and barrier which has been up for a long time.

Secondly, statements of the public’s right to involvement in a given decision is also crucial and I believe it is also a concrete tool to help facilitate rights. My knowing what my rights are, by having them in print on a registry system to say what my involvement may be in a proposed decision, gives me clarity and gives me a sense of what my entitlement is.

Thirdly, I think it’s crucial that in this bill there is required government response to our input of why a particular decision was made. Nothing is more frustrating as a citizen, or as a citizen group, than to spend hours of time on a submission, doing research, networking with others, using money out of our own pockets and our membership fees and to submit it to a minister and have no sense of reply, to have a decision be made and say: “I can’t believe it. Did they not at all hear me?”

I think the bill does provide some form of concrete tool to establishing that barrier of saying, “Yes, you’re heard.” I also realize that doesn’t mean we’re also heard

the way we want to be heard. But the fact that the minister has to give reasons of why the decision was made I think is an important step in the right direction.

Other mechanisms such as the right to appeal an instrument approval I think is also important.

Lastly, I just want to mention the creation of an Environmental Commissioner’s office. As citizens, we can’t do all of this monitoring ourselves. Most of us do this all on a volunteer basis; we have full-time school work or full-time jobs, have families. We can’t spend all this time monitoring government and their actions and whether or not they’re taking us seriously. That’s why an Environmental Commissioner who is at arm’s length from government I think is a crucial step to making these tools real, to making them effective, so that they’re not just fancy words in text.

Finally, as far as the issue of environmental rights is concerned, I want to clearly state that I believe environmental rights are a means to change but they’re not an end to change. I believe they must be placed within a larger societal context. They don’t stand alone; they work in relation with other measures and means to protect the environment. I don’t claim to be an expert on all of this larger context. A lot of it is overwhelming if you’re not spending full time understanding it.

But from my experience I do see rights within a larger context and I think it’s important to place it in that context. This bill will not end irresponsible treatment of the environment, but it does provide mechanisms that can assist us in working towards this direction, and I feel that’s important.

The last area in my presentation I want to deal with is the notion of consultations on the draft bill, some of my concerns and amendments I think need to be made.

In the early fall of 1992, environmental non-governmental organization consultations were held in 12 communities across the province. When I say across the province, this is northern Ontario, southern Ontario, western Ontario, eastern Ontario, and when I say 12 communities—one was held in London, for instance, which I coordinated—it doesn’t mean just London people came. People from the London and surrounding area came to these workshops.

It’s also important to say that these consultations were facilitated by the Ontario Environment Network. What is it? It’s a non-advocacy network of ENGOs, or environmental non-governmental organizations, across the province. I was involved in two of these consultations, in London and Toronto.

Some of the salient points in this document which resulted from these consultations are as follows. I have the report here and I hope you all have a copy of it, because I think it’s important to again refer to and take serious consideration of it at this stage in the process.

(1) The report indicates that there was widespread

support for the concept of an Environmental Bill of Rights.

(2) The report also indicates that such a piece of legislation has long been advocated by Ontario's environmental community.

(3) Throughout these consultations citizens expressed their support for the further development of the draft EBR. There was also general support for many of the core components of the bill, such as the model of public participation, the right to apply for review, the right to apply for an investigation, the right to sue when needed and expanded coverage of whistle-blowers.

However, it is also clear these consultations revealed concerns that citizens and groups wanted to have addressed within the further development of this bill. I want to raise a few of these concerns that I see have not been addressed and feel are in need of the attention of this committee. The two I'd like to raise that were identified and have already been raised in this session are ministerial discretion and funding. I'll go into them briefly.

The report, based on the draft text, indicated that there was too much ministerial discretion and throughout the EBR consultations citizens repeatedly identified the degree of discretion given to ministers as a concern.

I would like to suggest that subsections 15(1) and 16(1) in particular be changed to reduce the minister's discretion regarding notice of proposals for policies, acts and regulations and that an objective test be imposed in order to reduce this subjectivity. An objective test would enable a minister to be held more easily accountable and to be more easily reviewed by citizens and the Environmental Commissioner.

Dealing with the issue of ministerial discretion I believe connects directly to a comment on the Environmental Commissioner's office, and that is to say it's important to emphasize the Environmental Commissioner's importance to monitor such issues of discretion. I feel that no matter what piece of legislation it is, there is going to be discretion, and one of the Environmental Commissioner's roles is to monitor how discretion is used within government and to report that to the Legislature.

Another problem is the lack of a funding mechanism in the bill. There are a lot of issues around funding, most of which I don't have time to raise here. I am writing a formal report and submission about these funding issues and I will submit it shortly for your consideration. I also know there will be other presentations that will deal with this issue directly.

However, I do want to deal with one item, and that is the lack of an accompanying regulation in the bill which recognizes a proponent-pay principle in cases of mediation that occur under the bill. It's very clear that citizens placed around the mediation table do not have

the resources or the funds to prepare for mediation or participate on an equal footing with industry or government representatives. Based on the gas utility proceedings, I believe and hope a precedent has been set which recognizes the proponent-pay principle for mediation.

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In this sense, I hope the present bill has an implicit assumption within it that when mediation is looked into in more detail in the EBR office, this will be formalized, whether in the bill or in the regulations accompanying the bill or in the implementation. I think we can clearly say that mediation will not be seen as an effective and meaningful tool of participation without some kind of funding support.

There are other amendments I want to suggest to be made which I will include in a written submission. But, to conclude, I want to say that I personally believe citizens groups do support the bill and want it passed as soon as possible. We do not want this bill to demonstrate another failed attempt at bringing environmental legislation to Ontario. There have been too many failed attempts already. We want to use the bill.

As a bill stemming out of a consensus task force process, there was a compromise involved on the part of all parties. In this respect, some of the needs of all the sectors represented on the task force were met, not solely the needs of the environmental community.

I will end by saying that I know without doubt that citizens and citizens' groups aren't interested in merely enhancing our present bureaucratic or litigious culture but are interested in rights that are as user-friendly and accessible as possible. Both the act itself and its implementation must work clearly towards these goals. Thank you for your time; I am finished.

The Chair: Thank you. I am sure we have some questions. Mr Tilson, there's about three minutes for each party.

Mr Tilson: I understand your cynicism in dealing with ministers, dealing with big government, just trying to reach them, writing them letters in hope that you get a response, trying to set up a meeting with them. I understand that. You've obviously been following these proceedings and I hope you understand my cynicism with these whole proceedings, that there's going to be only a select group of people who are going to be allowed to appear before this committee. I'm cynical about the whole process from start to finish, considering we're talking about rights.

I guess I get to the next issue. The bill will pass, because the government will deem it to pass. I understand your statement to say it should be passed as soon as possible, notwithstanding many of the concerns you have expressed, and they may or may not be listened to by this government.

I'd like to get to the stage where the little person

wants to object about something. In other words, you talk about the issue of financing to the little person who's going to be handed a package, presumably a bill of 126 sections, unless it's amended, a rather complicated process. We know now this province is almost broke. It's cutting back on the whole issue of assistance, financial sharing, with respect to the Minister of Environment and other ministries. They simply do not have the funds. Yet we're now going to have a commissioner who's going to be criticizing a Minister of Environment for not doing his job because he doesn't have the funds to do things.

I know you've indicated that you'll be talking about the funding at a later time, but is it possible in these times, when we're getting cutbacks to Ministry of Environment staff—they're not able to enforce many of the provisions they now have because of whatever reasons, perhaps because they don't have enough staff, yet there is the whole fear of whether or not the commission can really do its job. You and others are saying, "Well, let's expand the role of the commissioner from the 15 people who are now being suggested to perhaps an even larger bureaucracy." All of this is going to cost a great deal of money. I'm not putting down the environmental problems; I'm talking about the economic reality in this province. Would you comment on those remarks?

Ms Gardner: I count at least six issues you raise. You're saying I can answer on any one of those issues?

Mr Tilson: Take the quick ones; I'm easy.

Ms Gardner: I think clearly that everybody is under fiscal constraints now, whether it's government or certain ministries within government or me as a citizen. We are all being financially careful and cautious. But I also feel that certain acts and pieces of legislation need to go forward within this present economic climate and I feel this bill is one of them. For instance, I do not stop my activism because I'm no longer on my scholarship from my school or because I just didn't get a job. It doesn't mean I no longer try to make that phone call or do that networking. I have to try to be more creative about it, but I don't stop—

Mr Tilson: You could do that now.

Ms Gardner: But I don't stop my activism even if my finances are reduced, and they have been and they probably will be.

As far as the issue of funding is concerned, more largely, I think that a lot of traditional ways of funding are still important and I also think we're at a time when we have to look at new ways of funding and new priorities, at what funding means and where it should go.

I'll speak only personally. I don't think it's just government's responsibility to help groups get funding under this bill. I see it as the responsibility of multiple

sectors. I guess the only thing I can say for myself within this climate is that maybe if we all give a little bit, together we'll have enough. I don't expect just me to give or just you, as government, to give, but to come together, to be cooperative and to create dialogue around this—I'll give a little bit—and also prioritize what's most important at this stage in the bill to provide funding around.

My bias is certainly in the early stages of participation, because it will—and when I talk about funding, it's not a larger Environmental Commissioner's office, which might cost more money; for me it's about basic education and awareness programs on the bill and how to use the bill. That doesn't have to come from just government. Education awareness is one activity that foundations and private sectors are often willing to fund-raise for. I can fund a cloth bag day in London quite easily compared to a more contentious issue.

Mrs Mathysen: Thank you very much, Ms Gardner, for representing London and area so very well. Two quick questions. You talked about the importance of the arm's-length commissioner in terms of being a monitor. It seems to me that there's a great deal to know. If I were the commissioner, I would need a lot of expertise. I wondered what qualifications you think a commissioner should have. Secondly, if you could comment, you mentioned the fact that there'd been an extensive consultation process and a real give and take among a number of parties that are affected by this bill. Could you identify perhaps one or two areas where that compromise, that give and take and listening to each other, made it a better bill?

Ms Gardner: As far as the issue of extensive consultation is concerned, I'm referring to the consultations conducted by the Ontario Environment Network with 12 communities across the province. I feel this was an important forum to help citizens understand the bill and to raise issues around the bill, which then went back to the task force.

As far as my comments on compromise were concerned, I was not a task force member, clearly, and my understanding of the process came by, I guess, trying to put my ear to the ground or trying to be as aware as possible of what was happening. Why I know there was compromise was because a group of citizens who were involved in the community consultations across the province were working together after that point in time to say: "Okay, here's this document. We have a constituency saying basically what we wanted. How can we summarize this in a very short form, in the form of a citizen or an activist document, saying what do we want to give to the task force, to say to Paul Muldoon or Rick Lindgren, please take these concerns to the task force as strongly as you can because out of all the possible amendments, these were really consistently important to us."

So my knowledge on compromise is that all of those issues that we brought to Rick and Paul to bring to the task force were not gotten, and funding is a good example. The issue of funding was not at all dealt with within the task force; it was seen as outside the consensus. Ministerial discretion could be another issue which we raised with them, and within the time constraints the task force was dealing with and the difficulty in resolving some of these issues, that necessarily wasn't dealt with to our adequacy either.

So those are a couple of examples of my having the understanding that compromise did occur. It wasn't a matter of them saying, "If we don't get this, that's it." I think there was give and take on all sides.

1630

Mr Grandmaître: Thirty seconds?

The Chair: Yes.

Mr Grandmaître: I know you're not interested in talking about funding today, but can I get away from Bill 26 for 30 seconds and talk about intervenor funding? What are your thoughts on intervenor funding?

Ms Gardner: I can only say that I have never participated in an Environmental Assessment Act hearing, nor have I ever applied through the Intervenor Funding Project Act. My only familiarity with the IFPA, if those are the correct initials, is some documentation I have read about its importance. I don't know the titles of the documents except that one came through the Canadian Environmental Defence Fund and I believe one was also done by Marsha Valiante, who I believe is speaking after me. I do believe that those reports, in which consultation had occurred with people who are users of the IFPA, said that it was crucial and very important to their representation and ability to represent themselves and their groups at these forums.

Mr Grandmaître: One short last question? Good.

You told us that you have been following Bill 26 since 1991, if I'm not mistaken, and you've even chaired a meeting in London, and yet I get the impression that you feel, even with a task force and all these great meetings, you weren't given a fair shake. Am I misreading your thoughts or misunderstanding your delivery?

Ms Gardner: If this bill were largely a litigious bill rather than a procedural bill, I would say that perhaps we have been given an unfair shake, as you've put it, but I see that 80% to 90% of this bill is about process rather than about using the court system. For me as an environmentalist and friends I know, a lot of our concerns in these consultations were about implementation of the bill. We saw the framework and we said, "Yes, this looks like this can help us," but a lot of our questions said, "How will this look in implementation?"

I think in that sense we have been given a fair shake, because I think a lot of our responsibility as groups is

to work with the office of the EBR, which to some extent we have tried to do over the last several months, to work towards changes, and so far it has been positive in receiving us.

The Chair: Thank you very much for appearing before us today. We appreciate your coming from Hamilton to see us.

MARSHA VALIANTE

PAUL EMOND

The Chair: The next presentation will be from Marsha Valiante. Good afternoon. It's good to see you on short notice.

Ms Marsha Valiante: Good afternoon, Mr Chair and members of the committee. My name is Marsha Valiante and I'm a professor of environmental law at the University of Windsor. With me today I would like, if it's okay with the committee, to share my time with Professor Paul Emond of Osgoode Hall Law School in the depths of North York. I think he came farther than I did today.

What I want to do is to make a statement and then Professor Emond would like to say a few words about the bill. The perspective I'm going to take is to talk from a more general perspective on the Environmental Bill of Rights, to talk about some of the larger issues and the larger context of it. I want to start by talking about the need for an Environmental Bill of Rights and then talk about what I see as some of the strengths and weaknesses in the bill. I apologize for not having a written submission but I will undertake to put this into the computer and send it to the committee next week.

My first point is about the need for an Environmental Bill of Rights. As we increasingly realize the complexity of the environment, the link between environmental quality and economic security and the intractability of many environmental problems, environmental decisions are getting more difficult to make.

We now accept the need for more preventive action; we accept that a sustainable future requires the commitment of all members of society and, in order to make these difficult choices that we have to make for our future, it's important that we recognize that citizens are legitimate partners in environmental decision-making.

Increased citizen participation is essential in making these decisions for several reasons: First of all, they will result in better decisions. Input of citizens provides decision-makers with a greater range of facts and opinions about the consequences of their actions, it allows them a fuller understanding of the range of issues involved in a decision and makes them better able to make a decision in the public interest, which is the requirement under most environmental legislation. There is an assumption underlying this that there is no one transcendent public interest; there are many perspectives that are brought to bear and that it's up to a

decision-maker to bring those together and make an appropriate decision.

A second reason why citizen participation is essential is that it increases accountability. As the basis for a decision becomes more transparent, accountability improves and there's greater chance of acceptance of the decision by those who participate.

Third, and probably the most important reason why citizen participation is necessary, is that it's fair. Citizens of this generation or following ones are the ones who ultimately bear the risks of environmental decisions that are made now, for good or ill. In most cases, as consumers and taxpayers, we also ultimately pay the economic costs, whether it's in the cost of products or in the cost of increased health care because of environmental contamination.

In our legal tradition, persons who are affected by a decision have the right to be heard. In Ontario, many environmental decisions are made without any or with minimal public involvement. The impulse towards greater participation has been accepted in many processes and is a part of the policy of many ministries, but it is inconsistently applied. Different processes are used at different times; the timing is not always early enough in the process to get the value of public participation; there is a glaring imbalance of resources which minimizes the impact of a lot of public participation; and many different levels of information are provided from process to process. The result of this is uncertainty, not just for citizens who want to participate, but for proponents as well.

I appear before you today to support the Environmental Bill of Rights for its attempt to bring more openness and more predictability to environmental decisions. I consider this a legitimate and proper choice to be made. However, I recognize that greater openness is not an absolute value. For me, the key to evaluating Bill 26 as a whole is in the balance that's struck between increased citizen participation and the restraints on that participation that ensure it's responsible. By responsible, I mean that participation will be relevant and constructive and that it doesn't result in inordinate delay to the process.

In my view, Bill 26 contains an acceptable balance. I realize it's a compromise bill and I don't look to it to solve all environmental problems, but I view it as a very positive step forward. I see this as a step that's largely consistent with the rights and procedures that are available in other jurisdictions in Canada and in the United States.

Although I support the bill as a whole, I do want to emphasize what I consider its major strengths and weaknesses. In terms of strengths to start with: The focus in the bill on participation in administrative decision-making is appropriate, in my view. Administrative decisions are usually the most important environ-

mental decisions that are made: They are where a policy is put into practice.

In the making of what, under the bill, are called instruments, this is the least open process now. I have one hat as a professor; my other hat is as a member and a director of a local environmental group in Windsor, and we see this day in and day out, that we are not privy to the decisions that are made on instruments that affect the people of Windsor.

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The focus is also appropriate because—you may not find many lawyers saying this—to provide access only to courts would not empower most citizens' groups as a practical matter. No citizens' group, especially a local citizens' group, opts for litigation, because it doesn't have the resources to undertake litigation. So I consider it appropriate that the focus be on administrative decision-making. It's also important because it puts the emphasis at the front end of the process rather than the back end of the process, which is what litigation does.

The provisions of Bill 26 will formalize participation, ensuring greater predictability. I see the provisions as balanced, and there are a lot of examples of where there is that balance. One important area is where there's a hierarchy of participation that's related to the significance of the environmental effect. I see that as appropriate. The more significant the effect, the more participation that should happen.

A second strength that I see in the bill is the establishment of the office of the Environmental Commissioner. I see that as a very important advance and I would echo the comments of the two earlier submissions to you today. I think it's especially positive because it's an office independent of any ministry and it relies on what I consider the underestimated power of publicity and embarrassment, the shame factor, to prompt appropriate government action.

A third strength is the establishment of a central registry of proposals and decisions. That has value in having one place for all the relevant information. It's important for citizens to have it accessible, because I don't know one person in Windsor who's ever read the Ontario Gazette. I think having an accessible place for it is very important.

You read it, right?

Mr Wiseman: Wayne has it.

Ms Valiante: Right, Wayne does. He did when he was a law student.

Another strength of the bill is the inclusion of a right to appeal instruments by citizens. I consider that appropriate because it equalizes the opportunity for review. That doesn't occur in the Environmental Protection Act now.

I think the ability to apply for review and investigation is also a strength, but I do have some reservations

about it. That's echoing the earlier submissions as well.

Another strength I see is the inclusion of the cause of action, which is essentially a citizen suit provision. I see that as positive because ministries—no one, I think, would disagree—cannot ensure the enforcement of all contraventions of environmental legislation. The experience in the United States with citizen suits has shown that the agency takes on more significant cases while citizens' groups, using a citizen suit provision, take on the smaller cases with more localized impact, which is a workable division of labour in terms of contraventions of environmental legislation which has worked well there.

A final strength that I'll mention is the change in the public nuisance standing rule. I see that as a partial dismantling of the rule, but it's a dismantling that's long overdue.

There are weaknesses that I would like to raise. First of all, the declaration of a right to a healthful environment is too tentative. There's a growing international consensus that environmental rights are fundamental to the exercise of other rights and they're fundamental to long-term economic security. I think that could have been more strongly placed in the bill.

I think the balance that's struck in the bill does allow for excessive discretion, and this works with the judicial review provisions. There's a weakness because very few requirements are there to actually implement the purposes of the bill. There are more what lawyers would call "weasel words," but lawyers also find ways of getting around those.

A third weakness I see, which relates to the amount of discretion, is that the judicial review is too circumscribed. That's been discussed by other people and I won't go any further on that.

The fourth weakness is that, in my view, the citizens suit provision will not be used as much as expected. First of all, it's available in very circumscribed circumstances, so the opportunity to use it will not present itself that often. But more important, the bill fails to ensure that information about non-compliance is released to the public via the registry. Another weakness in the bill with respect to the citizens suit provision is that it fails to change the costs rule or to provide intervenor funding, so that citizens and groups won't be able to afford to bring a citizens suit.

The lack of funding in the bill will also limit the ability of citizens and groups to participate in the administrative processes, in the appeals and in mediation. I consider this ironic because the bill, on the one hand, is giving greater responsibility in recognizing the responsibility of every person to protect the environment, but does not address the imbalance of resources that will allow the fulfilment of that responsibility in a responsible way.

Despite all of these weaknesses, in my view, Bill 26 is a positive step forward and should be supported. I would like to read a quote that expresses my view on this that was written by Professor Bob Paehlke at Trent University. He says:

"Democracy, participation and open administration carry not only a danger of division and conflict but as well perhaps the best and, I would add, the only means of mobilizing educated and prosperous populations in difficult times."

Mr Paul Emond: Just a few comments, because I know you want to ask some questions. I first became involved with environmental legislation in Ontario in 1970 with the introduction of the bill that led to the passage of the Environmental Protection Act, then followed the development of the Environmental Bill of Rights over the last 20 years. It began first with the Michigan legislation, then with the call from the Canadian Environmental Law Association for an Environmental Bill of Rights.

The focus in those early years was on a requirement that there be a substantive right to a healthy environment. The focus in this bill has shifted a little bit, so that the right that's demanded and indeed the right that's provided in this bill is a process or a procedural right. I think that's a sensible development that's taken place.

Indeed, I think the balance that's been struck in the bill, a balance that empowers citizens through better, more effective participatory rights to play a role in environmental decision-making and environmental protection, essentially as equal partners in the process, is a very positive development and, like my colleague from the University of Windsor, I'm very supportive of the bill.

Let me stop there, and perhaps the balance of the time might be spent dealing with questions you may have.

The Acting Chair (Mr George Mammoliti): Thank you very much. We'll go to the New Democrats at this point.

Mrs Mathysen: I'll ask a question then, if Mr Wessinger has none. You alluded to the need for information to be released to the public by the registry, the non-compliance. Can you suggest a specific mechanism for that, so we can discuss that?

Ms Valiante: I actually did a submission to the task force which fleshed out this a little bit more, but my view on the registry was that it was fairly narrow and that there are a lot of databases that—my knowledge is of the Ministry of Environment and I don't profess to know about every one of the ministries that could possibly be covered by this. But within the Ministry of Environment, there are a number of databases that are supposedly publicly available if you were to access

them. There's generator registration for hazardous waste. There are a number of things that are compiled. In my view, the registry could be a place for all of those things.

I think the participation of citizens in environmental decision-making—not just that that's dealt with in this bill, but that's dealt with globally—would be greatly enhanced if all of those databases could be put on to the registry that's created in this bill. So I think information that is supposedly public within the Ministry of Environment, whether it's on a database now, I guess, should be put into the registry and be available if it is actually public. I think that would go a long way to helping particularly citizens' groups that aren't in Toronto to participate in their community.

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Mrs Mathysen: So you think along the way that information has moved the private sector along in terms of—

Ms Valiante: My point is that that information is provided now. You're not asking the industries that are regulated to provide more information. That information is provided now. It's accumulated in the Ministry of Environment but it's very difficult to get, because there's no real mechanism for tapping into that when you're in a community such as Windsor. It's very difficult to get all of that in one place. You're not able to. My view on the registry is that it could be that vehicle.

The Chair: Mr Daigeler?

Mr Daigeler: I had to be in the House, so I wasn't able to hear the presentation, so unfortunately I'm not be able to ask any questions.

The Chair: Then Mr Tilson.

Mr Tilson: Thank you for your presentation. I appreciate the shortness of the time that you had to prepare and we will look forward to seeing your written comments.

My understanding with respect to the Environmental Commissioner, in fact I suppose really the whole bill, is that it's only responsible for Ontario ministries. Only matters involving Ontario ministries can be challenged. So in effect, for example, a corridor that's going to be prepared for Ontario Hydro, a gambling casino in Windsor, which may be challenged, for example, by the Concerned Citizens of Renfrew County for whatever reason—and that may be a legitimate request, although I understand the way the gambling casino in Windsor is being established there may be an overlap and it may not be under the jurisdiction completely of the Ontario Ministry of Consumer and Commercial Relations. I'm not suggesting that there will be one, but that's an example in your own area.

The superdumps: When you look at the environmental issues that are concerned in this province—and

there's all kinds of them: the Great Lakes, water, air—certainly one of the most controversial issues at this time is the superdumps in the greater Toronto area, for example. Those are under the jurisdiction of the Interim Waste Authority and at this present time, this bill, if it was law today, would not apply to those groups.

We're now on the verge of passing Bill 17, I think it is, the bill creating the three corporations. I don't know the answer to this, but I'm not so sure about the one that's creating a corporation for roads, a corporation for water, a corporation for real estate. You may know somewhat of that.

I don't know whether or not, for example, by the government divesting its responsibilities for those areas, if someone is objecting to something that's going on by specifically one of those corporations, because it's not really an Ontario ministry—and I could be challenged on this, because I don't know the answer to that, but I'm very suspicious of it.

In other words, are we being had—I say we, the citizens of Ontario—in that we're going to get all kinds of rights as individuals, but yet not really? Because there are all kinds of things, and I've listed off some of them and if we put our heads together we could think of others, that have very serious environmental repercussions, and the individual, the small person, the large person, whoever, won't have those rights under the environmental bill. Could you comment on that?

Ms Valiante: It's important I think to see the bill in its context. This is not an organic statute that's the only environmental bill in Ontario. You have it being grafted on to a number of other pieces of legislation.

In terms of waste management, obviously the Environmental Assessment Act will apply which has its own sort of protocol for citizen participation. Municipalities have their own mechanisms when you talk about land use planning. There are rights of citizens to participate in those decisions. A lot of those overlap at some level.

I don't agree that the citizens of Ontario are being had. I don't know exactly which ministries will be covered and which won't, and I don't know whether crown corporations will, ultimately or today.

Mr Tilson: I'm not disputing the issue of ministries. What I'm saying is there's a whole bunch of things out there, whether it's the gambling casino, to take a nice interest in a local issue for you, to a Hydro corridor, to a superdump. Under this bill people who are very concerned with these issues have no rights under the environmental bill to challenge the Minister of Environment and Energy, the Minister of Consumer and Commercial Relations or any other ministry. They do not have the right because the commissioner in this bill only applies to Ontario ministries. I believe that's what it does anyway.

Mr Emond: The substantive right in the bill applies

far more broadly than that, and if, for example, the IWA is engaged in activity that leads to a contravention of a law or regulation and a significant impact on the environment, one has the right, after you've followed through the procedure that the act sets out, to initiate an action.

Mr Tilson: The minister has denied that there is a process for public hearings under the IWA, notwithstanding that the members of the public who are in the three regional areas are very cynical of what the IWA is doing. They are challenging the IWA, and the fact of the matter is the Minister of Environment is saying, "Sorry, that's a separate jurisdiction; the Ministry of Environment has nothing to do with that," and you can't challenge that under Bill 26.

Mr Emond: You can challenge anything you want under any bill you wish. Whether you'll be successful, I guess, is the key to your question. Will it be a successful challenge? You're absolutely right to raise some questions about the Waste Management Act and the way in which it has exempted the IWA from certain activities within a particular geographic region. But I think that is a separate issue. That is other legislation that was designed to put in place other policies, with which you may disagree. I suspect you do, in light of the question you've asked. But I don't think it's fair to say this bill is ineffective, because there is legislation that speaks specifically to waste management matters within the greater Toronto area.

Mr Tilson: That's the point of my question.

Mr Emond: I appreciate that, but if the Legislature passes legislation that exempts a particular ministry or a particular corporation or an individual from certain acts such as this act or the environmental portions of the Environmental Assessment Act, it's at the point when that legislation is passed, does that then say that one must be vigilant, rather than to say now that the legislation is passed that all the other legislation that doesn't apply is therefore ineffective. I think this is effective legislation. I think this is good legislation. But I appreciate the frustration that you express with regard to the Waste Management Act.

The Chair: Are there further questions from members? Mr Fletcher.

Mr Tilson: Going another round, are we?

The Chair: One party waived its right to ask questions.

Mr Tilson: Then I can have some more time?

The Chair: You've had considerably more time than any other caucus.

1700

Mr Fletcher: I was just wondering if the parliamentary assistant or his help could expand upon what Mr Tilson was saying. I think that's serious, if that is the case.

Mr Wayne Lessard (Windsor-Walkerville): With respect to?

Mr Fletcher: What Mr Tilson was saying about the IWA.

Mr Lessard: Mr Shaw is from the ministry. He may be able to clarify that.

Mr Shaw: The draft regulation which has been released at the time of first reading prescribes the Waste Management Act of 1992, which is Bill 143; therefore, that act is subject to the provisions of this bill, ie, a request for a review of that act. In the various policy statements which surround the issues of Bill 143, such as incineration, recycling etc, a request for review may also be made of those under the provisions of the bill.

The site selection process that the IWA is involved in is proceeding under the Environmental Assessment Act, and the bill makes specific provisions respecting the Environmental Assessment Act to avoid a duplication of process.

The Chair: Thank you for taking the time, on such short notice, to appear before the committee today. We appreciate your presentation. If you wish to submit a written one, we would be more than pleased to accept that.

CONCERNED CITIZENS OF RENFREW COUNTY

The Chair: The next presentation will be from the Concerned Citizens of Renfrew County, Ole Hendrickson. You have 30 minutes allocated to you.

Mr Ole Hendrickson: I certainly appreciate the chance to be here today. The purposes of Bill 26 are very general, as I'm sure you're aware: to protect the environment, provide for its sustainability and to protect the right to a healthful environment. I'd like to put Bill 26 in the context of other types of environmental protection instruments that are available for the people of Ontario, such as regulations on specific pollutants under the Environmental Protection Act and the environmental assessment procedures under the Environmental Assessment Act.

I also want to generally discuss and will spend a fair bit of time on the use of economic instruments for environmental protection, such as environmental taxes and subsidies, and also briefly talk about initiatives that promote greater awareness of the environment, greater information flow. I feel the Environmental Bill of Rights primarily falls in that latter category. I think the Environmental Bill of Rights is particularly valuable because it enhances all of those tools I just mentioned, although I consider it primarily a public information tool. I think it increases overall public participation in environmental decision-making and makes other existing tools more effective.

First, I'd like to address some of the limitations of regulatory approaches. They're often focused on end-of-pipe solutions to waste problems, to pollution problems.

We know there are limitations to regulating pollution. We can't, for example, achieve sustainability just by regulating toxic pollutants, because a lot of the problems in the environment arise from things that really aren't toxic, like carbon dioxide. It's essential for life, but when we have too much carbon dioxide from burning fossil fuels it also is a problem in the environment. CFCs are widely used because they are so non-toxic, yet we've discovered that those are depleting the ozone layer.

We use regulations to limit toxic chemicals in the environment and we can set maximum levels for those chemicals, but really our ultimate goal is to eliminate certain toxics and not to regulate them. There we see the need for economic instruments to work in harmony with regulations to achieve that end.

None the less, we tend to focus on regulatory approaches to protecting the environment, and what does the Environmental Bill of Rights do? It gives us a single window for finding what regulations are available, what tools are available on the regulatory side for environmental protection. Some people might feel we will simply be swamped under a mountain of regulations and policies and instruments under the registry of the Environmental Bill of Rights, but I don't agree. I think what that registry will create is at least something of a simplification. There'll be a single window in which you can go to find out what regulations from different ministries are affecting a case you may be personally interested in.

The Environmental Bill of Rights, in a regulatory sense, is essentially a neutral instrument. There may be flaws in our current regulatory system. If so, those will come out as people start using the registry and using the Environmental Bill of Rights to make challenges. If there are regulatory approaches that are overly complex or unnecessary, those will gradually become revealed as citizens challenge waste problems under the Environmental Bill of Rights.

I agree, of course, that the procedural rights that are created by the Environmental Bill of Rights are very important citizen tools: the application for investigation; the right to appeal new instruments, new policies; the right to sue. Those are extremely important tools which enhance the effectiveness of regulations because, as other speakers have pointed out, sometimes small cases slip through the cracks, and citizens may be quite aware of the local situation which is a problem that can be sometimes fairly easily addressed but it has escaped the notice of the ministry that's responsible. It is a very important citizen empowerment tool for using existing regulations.

One of the areas where I don't think regulations have worked too well in the past is in dealing with natural resources: resource depletion, resource use. For example, in Renfrew county, which is where my group

is working, we see that licences to cut crown timber have been issued almost in a hereditary fashion. Sometimes people have held order-in-council licences for generations, literally, and sometimes they are granted access to crown timber at far less than market value, so essentially they are getting subsidized timber and, far worse, often the differential between the rate they pay on stumpage and the open market rate is greatest for the highest-value species like white pine or red oak, and of course that promotes poor forestry practices such as high-grading. One thing I very much hope is that the Environmental Bill of Rights, the regulations, will capture timber licences as perhaps a class II instrument in the future so we can have a better look at how we're allocating this public resource and perhaps manage it and protect it better for future generations.

Now I'd like to turn to economic instruments and give a little philosophical overview of why I think there's more scope for use of economic instruments as an environmental protection tool. I'd like to quote a well-known ecological economist named Herman Daly, who has three principles for sustainability, and sustainability is part of the goal of the Environmental Bill of Rights. These are, very briefly:

For renewable resources such as timber, the rate of harvest should not exceed the rate of regeneration. That's sustainable yield.

For waste we're generating from manufacturing or other processes, the rate of waste generation should not exceed the capacity of the environment to assimilate that waste. That's sustainable waste disposal.

And there's an interesting third condition for sustainable development, that is, that depletion of non-renewable resources should require comparable development of renewable substitutes. We have to move our society, gradually but steadily, from non-renewables to renewables.

Daly and his colleagues suggest that there may be a wide variety of economic instruments, and some of those are marketable permits, fees, environmental performance bonds and property rights to implement those three conditions of sustainability. They talk about severance taxes on consumption of non-renewable resources, on greenhouse gases and so forth. Quoting Daly, "Fees, taxes and subsidies should be used to change the price of activities that interfere with sustainability versus those that are compatible with it."

1710

Many people recognize the need for markets to reflect the full environmental cost of products, yet I think there's a very acute awareness, particularly among politicians and bureaucrats, that if a jurisdiction shows leadership in using economic instruments for environmental protection it may endanger its existing industries and markets, so who will lead? That is a big limitation of relying on economic instruments, because it does risk

loss of your current industry.

I think in the long run Ontario would derive a lot of benefits from greater use of economic instruments in regulating resource use and sustainability. This is true particularly if we shift taxes gradually from the point of consumer purchase back towards earlier stages of resource extraction and manufacturing, if we tax pollutants, if we tax extraction of non-renewable resources. Why? Because putting the taxes at the front end encourages further value added processing downstream. That will help speed a transition to economies that are based on more sustainable resource use, more recycling, value added manufacturing, self-reliance, diversification and perhaps allow us to decrease sales tax and personal income taxes.

Just to make my point clear, I think we need to consider carefully new economic measures to promote resource conservation and waste reduction. Our regulatory approaches can only partly get us where we need to be. I think they're important too. I think the Environmental Bill of Rights can and should be used to stimulate public debate on resource taxation measures, and I strongly recommend that drafting regulations for the Environmental Bill of Rights take this into account.

In particular, I recommend against taking a strict approach to subsection 16(2) of the Environmental Bill of Rights. That section suggests that ministers need not give notice to the public of a regulation that is "predominantly financial or administrative in nature." This is where I think we get to the idea that environmental rights are fundamental. Every cent we spend as a government has an impact on the environment, and we can't come to grips with sustainability without realizing that fact.

I note that the Ministry of Finance is one of the ministries that is expected to prepare a statement of environmental values under the bill of rights, and I strongly support that. I think that with some encouragement both the Ministry of Finance and the public will be willing and able to tackle environmental protection using things like economic instruments, government procurement policies, new fiscal measures.

Now I'd like to turn to environmental assessment as a tool for environmental protection. There are limitations to environmental assessment, and one of those limitations is that it's very much focused on the final decision. If a project has been developed in the absence of well-thought-out sustainability, and also, I would argue, in the absence of proper market signals for sustainability, it places a minister who has to make a decision in a no-win situation: Do you accept the flawed proposal or do you reject development altogether?

Often with the environmental assessment process, we're faced with decisions that are flawed. They're no-win; we've got a bad project. A bad project arises from an earlier problem in government, which is a bad

policy or a bad program, and this is where I think the Environmental Bill of Rights can really come into play. It will help increase public involvement in earlier stages of government decision-making because policies will be captured under the registry. We will have notice of new policies, new programs, and that will help the public be involved in getting better environmental policies in the province.

In my area of Renfrew county I think we have suffered in particular from bad energy policies in Canada which have led to large subsidy. We are now very dependent on AECL Chalk River for employment, and I think that's unfortunate. Nuclear power is not a particularly sustainable industry, and I think savings could have been made from more citizen participation, more knowledge in an earlier step in terms of policy-making.

Another key goal I see that the Environmental Bill of Rights will facilitate is diffusion of sustainable decision-making through different government ministries. Again, the ministry statements of environmental values should be very helpful in this regard. So ministries that perhaps in the past haven't thought of themselves as environmentally concerned will be thinking along those lines when they prepare those statements of environmental values, and I think the public will be interested in being involved in that process.

I see environmental assessment as primarily a tool for enhancing public awareness, for promoting public information. I think both the Environmental Assessment Act and the Environmental Bill of Rights are primarily tools for conveying public information. I don't see the Environmental Bill of Rights as primarily a litigious instrument and, again, one very important thing to remember about the Environmental Bill of Rights is section 85, the concept of due diligence.

A key benefit of the Environmental Bill of Rights for industries and for institutional investors is that it will reveal gradually what the public concerns are about the environment in their particular sector. They will be able to look at other companies in that sector that have encountered challenges and they will recognize the need for due diligence in their own manufacturing waste management procedures.

So it will put an onus on companies to also incorporate sustainability concerns into their thinking and their decision-making, because it's not enough for the government to get its own house in order, to incorporate environmental assessment into its spending and its regulatory activities. That thinking about sustainability has to be incorporated throughout society into businesses, into households, and the Environmental Bill of Rights again has some merits in accomplishing that goal.

Now some concluding remarks. I've talked about regulatory instruments and about economic instruments.

The distinction between those is probably less distinct than many people would suggest. Things like tradeable emissions permits, pollution taxes and resource severance taxes all accomplish regulatory aims by correcting misleading market signals, by avoiding externalities.

So really the goal isn't to get government out of the marketplace, but to ensure that government intervention occurs in a fair and cost-effective manner. As I suggested earlier, the Environmental Bill of Rights should be designed to encourage the use of economic instruments to supplement our regulatory instruments, which we tend to focus on for environmental protection.

I also have a lot of concern about where environmental protection is going internationally. I see that there is a trend these days to deregulation, a sense, especially at the international level, that we've just got to take away regulations because other countries will outcompete us; if we have stricter regulations, our companies will simply flee the province.

As I pointed out earlier, I think there's a lot of merit for Canada, a very resource-dependent country, and Ontario as a resource-dependent province, to champion better use of economic instruments because you can keep more financial activity at the local level.

One very important thing about the Environmental Bill of Rights in Ontario: It's a sign that the deregulatory tide may be turning; it's a sign that we still believe in protecting the environment with a variety of regulatory instruments and making them more effective by empowering citizens to use them better.

I am a very strong believer in voluntary action by citizens, but I'm not a particularly strong believer in voluntary action by corporations and by government because they operate in a more open, public domain. So, fundamentally, what the Environmental Bill of Rights is doing is helping link citizen voluntary action to government regulation, and also it will open, potentially, channels of communications with businesses.

1720

I'd like to just read a quote from an ecologist, C.S. Holling, who made the following statement:

"Sustaining the biosphere is not an ecological problem nor a social problem nor an economic problem. It is an integrated combination of all three. Effective investments in a sustainable biosphere are therefore ones that simultaneously retain and encourage the adaptive capabilities of people, of business enterprises and of nature. Those adaptive capacities depend on those processes that permit renewal in society, in economies and in ecosystems. In nature it is biosphere structure, for business and people it is usable knowledge and for society as a whole it is trust."

I think most fundamentally the Environmental Bill of Rights is about creating a society where businesses, governments and ordinary citizens are open and honest

in their dealings with each other and it is fundamentally about trust.

Thank you for this opportunity.

The Chair: Mr Daigeler, we have about three minutes a party.

Mr Daigeler: Thank you very much for your presentation. As somebody from eastern Ontario, it doesn't happen too often that we come down for a presentation to the committee, so it's appreciated. Were you already involved in the task force that prepared the bill that's before us?

Mr Hendrickson: No, I was not.

Mr Daigeler: Could you tell me what is the main concern of the group that you represent? I seem to detect you're mostly related to the lumber industry there.

Mr Hendrickson: Mostly, actually, to the Chalk River nuclear labs of Atomic Energy of Canada Ltd, which are federally regulated, but that has given me some insights into things like environmental assessment. For example, we're very active in the proposed removal of the low-level waste from Port Hope, which would come up to the Deep River-Chalk River area. That is really one of the two sites that's in the radioactive waste siting process, which is being run federally, but I suspect that Ontario will at some point be asked to render a decision on that.

Mr Daigeler: I still have a bit of difficulty with this environmental registry. I'm not really involved in this area so much. Can you see an instance where you or your group would use that register, where you would tap into it, and could you give me an example?

Mr Hendrickson: Yes. An example is that about four years ago the AECL in Chalk River was operating a radioactive waste incinerator. To operate that incinerator, they needed not only Atomic Energy Control Board permission but also a permit from the province of Ontario. We were simply not even aware that there was a radioactive waste incinerator operating there.

I think that a registry might help alert groups like ours, small groups with pretty limited resources, that something like that was happening in our neighbourhood. It's not currently operating, but it did disperse a fair bit of radioactive, gaseous substances in the vicinity of the Chalk River labs.

Mr Tilson: Thank you for coming. You've obviously read a lot and thought about many of the issues that you've put forward, and I appreciate your coming and expressing your views.

I appreciated the issue of voluntary action that you were suggesting in your comments. An expression that I've heard recently, and I don't know how widespread it is, is that instead of talking about the 3Rs we should be talking about the 3Es, in other words environment, energy and economy.

I suppose the example would be the firm that develops a treatment plant for the purposes of reuse of water and suddenly finds out that economically it pays to do that, and that type of thinking I agree with, as opposed to having regulation after regulation and ordering people to do certain things. Whether we like it or not, all of these things are wrapped into one, and you have said that much more eloquently than I.

I guess my question to you is that if we're going to try and encourage companies, the larger polluters or whoever, the small polluters, to do these things and to take the voluntary action that you suggest—and you have said in your comments that you think Bill 26 will do that, but will it really? Should we be working on the legislation that we already have?

We can be very critical of ministries for not doing certain things. The Environmental Commissioner is going to come forward and say that. But shouldn't instead a government, whatever government, be in fact trying to improve legislation which we all know is inadequate, the actions that are being taken by the Ministry of Environment, for example. My question is, really, is Bill 26 going to solve the problems, and they're very intelligent solutions that you've been talking of.

Mr Hendrickson: No, it won't solve all our problems. It's one tool. I think it makes other tools more effective. What you asked about voluntary action by companies, I suggested that we certainly need regulations. I don't entirely believe that voluntary action can solve our problems, but I also mentioned the concept of due diligence.

I think that's where companies have some scope for voluntary action in preparing their own environmental audits, which may not be required under legislation, in alerting their own workers about the need for environmental protection, in the CEOs, the senior management, taking personal responsibility for transferring that sense of stewardship throughout the company. I think, sure, there's some scope for voluntary action but you have to have regulations. You've got to have ground rules, baselines, that everyone has to follow, a sort of level playing field.

Mr Wiseman: You went down a road that isn't really directly connected to the bill.

Mr Hendrickson: Yes, I understand that.

Mr Wiseman: But it's one that I'm interested in and I want to hear your views on, and it has to do with tradeable permits. In the United States, of course, they've moved in that direction of tradeable permits with respect to sulphur dioxide emissions and it's hoped that it will move the number from 26 million tons a year down to about 13 million.

That's the problem, as I see it, and I just want your comments on it, that it would get it so far and then

they'll be able to trade around and you can pollute here or there and you may even be able to overload one section of the country with pollution because you've traded all the permits to that one area. Then you've got a situation where it's no longer dispersed equally but it is now more concentrated and causing even more ecological damage at maybe even the beginning of an ecosystem, so that everything downstream and downwind becomes even worse.

Mr Hendrickson: Tradeable permits again, that's one instrument. I share your concern. It gets you down to some baseline level and then you can end up stuck there. I personally think that tradeable permits may be—maybe you need pollution taxes or something like that to really make the market signal effective, because our goal should be ultimately elimination. But for something like sulphur dioxide, realistically we're not going to achieve an elimination of sulphur dioxide in the near future.

To some extent I've suggested that there may be a sustainable environmental assimilation capacity for certain things. We see that with carbon dioxide. There's probably some sustainable assimilation capacity for sulphur; we can live with some of it probably in ecosystems. Maybe that's something where tradeable permits aren't the worst idea for that particular thing, but I wouldn't certainly recommend them for a toxic pollutant, for example, because there you clearly want to get to elimination and not just reduction.

The Chair: One minute. A very short question with a very short response.

Mr Wiseman: Under the Environmental Assessment Act, it requires that the proponent would have to prove that there are no other alternatives to the activity that they are undertaking, that they will have to prove, for example, that what they are doing is the only choice. Under the Environmental Bill of Rights, wouldn't they be required even more so to find other alternatives than just using the environmental assessment process?

Mr Hendrickson: I'm not quite sure I follow your question; I'm sorry.

Mr Wiseman: All right.

The Chair: Well, that's an appropriate response.

Mr Wiseman: In 30 seconds I don't think I'm going to be able to clarify it, but thanks anyway.

Mr Hendrickson: I'm really sorry.

The Chair: You could have this discussion following the committee meeting. Thank you very much, Mr Hendrickson, for appearing before us today.

1730

CONSERVATION COUNCIL OF ONTARIO

The Chair: The final presentation of this afternoon is from the Conservation Council of Ontario, Duncan MacDonald and Chris Winter. Good afternoon, gentle-

men. You have been allocated one half-hour for your presentation before the committee this afternoon. We appreciate your appearing on such short notice. You might want to reserve some of the time for a discussion of your presentation with the members.

Mr Duncan MacDonald: In a reflection on the shortness of notice, your copies of our presentation are in transit. You'll be getting them any moment.

Mr Chris Winter: We've got them; you will.

The Chair: We appreciate the time lines were very tight.

Mr MacDonald: What I would like to do in my presentation—

The Chair: I'm sorry; would you just introduce yourselves for the purposes of Hansard?

Mr MacDonald: My name is Duncan MacDonald. I'm president of the Conservation Council of Ontario.

Mr Winter: I'm Chris Winter. I'm the executive director for the Conservation Council of Ontario.

Mr MacDonald: Just by way of background, I'd like to tell you briefly about the Conservation Council of Ontario. We're a council that was established in 1951. Our patron is the Lieutenant Governor of Ontario. We bring together 32 provincial organizations that have an interest in the environment and the conservation of natural resources. We are quite a diverse group that represents a broad spectrum of interests in the province of Ontario. So we thought it was very important to be here today to put forward our views.

Just for the record, we are supportive of the need for a provincial Environmental Bill of Rights, and we expressed this concern to the then Environment minister, Ruth Grier, last year. So any of our remarks I think should be taken within the context that we are supportive of this idea.

We have a section in our brief on general concerns, and I will deal with those. Chris will deal with the whole area of the environmental statement of values, which we think is very important to the bill of rights. Then in the rest of our brief we look at different sections of the bill, putting forward the concerns we had in 1992.

Some of our general concerns: The rationale for the Environmental Bill of Rights is to open the environmental decision-making process to the residents of Ontario; give them access to the information necessary to take action; guarantee them the opportunity to go to court, if necessary, to protect the Ontario environment; and protect them from undue pressure, coercion or other penalty in the exercise of these rights. The foundation of these new rights is the establishment of an open, understandable, accessible process of environmental decision-making.

While the draft EBR we have before us makes great

and unprecedented strides in the achievement of that objective, the CCO has some concerns as to the format and contents of the bill. We emphasize that we support the bill and present our recommendations and suggestions as friendly amendments that would, in our opinion, strengthen the bill and help ensure its objectives are realized. The CCO's general comments follow.

We are concerned about the dense, impenetrable, legalistic tone of the current draft. While the bill is directed at including the individual, in its tone and its language it tends to exclude everyone without a law degree. We encourage that a companion document that provides a clause-by-clause analysis be published to encourage public use of the bill's provisions.

The CCO is concerned about the degree of ministerial discretion built into the legislation.

The CCO is concerned about the excessive time allotted to the implementation phase. Allowing for the nine months allocated to the drafting of ministerial statements of environmental value and the "reasonable length of time" given for the drafting of regulations for the categorizing of classes of instruments, we do not foresee a working version of the EBR in place and operating before the end of 1996. We would recommend that much of the preparatory work could be completed over the next 12 months.

The CCO is unable to comment in an authoritative manner on a number of substantive issues—the nature and structure of the registry, the content and use of the SEVs, the application of the EBR to crown corporations, the grandfathering of environmentally significant instruments such as class EAs etc—which are to be covered or will be covered by regulation. We would welcome an opportunity to make recommendations in these areas when the supplementary regulations are released.

I would now ask Chris to talk briefly on the statements of environmental values.

Mr Winter: Thank you all for giving us the time to be here. I guess that in pulling together this recommendation we wanted to make sure we were dealing from an area of strength of the conservation council and what we've been doing. That area of strength is in the whole concept of environmental strategies and how we really make sense out of this whole mishmash of regulations, legislations, policies, instruments—whatever you want to call them—both within government and non-government, and private sector as well. There has certainly been, in the last five years, a lot of energy now being dedicated to the environment. Our goal is to make sure that energy all goes in the right direction, in a positive direction, and that there's some common sense and coordination among them.

We see the Environmental Bill of Rights as being the first piece of legislation that is intended to do that, to

bring all the various pieces of legislation and instruments together and create some harmony and consistency and sense of purpose among them. There is a tremendous potential in this bill, and that potential is in building better government, more environmentally responsible government and more effective and cost-effective government. All this depends on how the Environmental Bill of Rights is applied.

What we see with the draft we have in front of us is that there's a potential for it to be a major contributor to an improved environmental strategy for Ontario. There is also a potential for it to be business as usual and still proceeding along in a muddled, confused way. I think a lot of that depends on how we approach the statement of environmental values.

The first thing to highlight, keeping in mind this comment about how the bill should be people-friendly, is that I had to go to the companion document to get the comment about the bill that I wanted to describe its purpose. That's from An Introduction to the Bill of Rights, where it says: "The bill will place a greater emphasis on making right environmental decisions in the first place. It will require greater political accountability when government makes decisions. If government fails to protect the environment, citizens may go to the courts. The courts are seen as a last resort."

I don't know the process and the presentations you've had here, but my sense is that the tendency with any bill like this is to look at the legal ramifications and what's going to happen in terms of lawyers and court cases and dollars and everything like that. I look at this and say, "The most important thing we do is up front," and look at the statement of environmental values as a statement that is going to guide ministries and bureaucrats within those ministries and also guide us outside government, in the non-government community, in the private sector, on how we focus on environmental priorities. So a stronger emphasis has to be made on upfront planning and effective public consultation.

The Task Force on the Environmental Bill of Rights said in its July 1992 report, "Many ministries within the Ontario government have developed the equivalent of 'mission statements' or 'strategic plans,'" and encourages the ministries to use those as a starting point. "This statement should not be lengthy and should achieve two objectives: it should provide a concise statement of what the purposes of the Environmental Bill of Rights means to environmental decision-making within that ministry and second, it should integrate the purposes of the Environmental Bill of Rights into the considerations that are already being applied as part of that ministry's decision-making." Essentially, it's saying that the statement of environmental values should say how the ministry expects to respond to all the provisions in the EBR.

We compare this with what we said in our 1991 environmental strategy for Ontario, where we brought together about 200 individuals to brainstorm on an environmental strategy. The very first recommendation in our strategy was that each provincial ministry and federal department should publish a clear and concise strategy outlining the major problems under the ministry's jurisdiction and proposed remedies. We say the strategy should be short—no more than 20 pages—and contain a statement of major concerns and their implications, current plans to resolve the problems, new ideas under study which would further help resolve the problems and research needs; ie, what we don't know but need to know. So there's a similarity in what we've been asking for and what's in the Environmental Bill of Rights.

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There's also a difference in that the Environmental Bill of Rights, in the current wording in section 7, focuses mostly on process questions. It deals with the process of dealing with environmental concerns and at the moment, in what I read in the text, it doesn't give us an assurance that the ministries will identify and address the significant environmental issues in meeting the requirements of the bill. So I'd like to see that component strengthened.

The differences that we see would be a more detailed description of environmental issues and their ecological, economic and social impacts and a statement of the existing and proposed instruments for addressing these reviews. That I'd like to see, if not written into the bill, certainly written into the description and guidelines of how each ministry should develop them.

We point to the common ground of the Ministry of Agriculture and Food as an example where they deal with all the issues facing the ministry. They have a one-page section on environmental responsibility. It gives a quick listing of issues, such as soil degradation and farm water supplies, and it says the that ministry will develop long-term and integrated strategies for dealing with these. It sounds fine to me. I think that's what we're all after, but I think what we need to go from this statement to what should be in the Environmental Bill of Rights and statement of environmental values is something that says: "Here is how we are addressing these issues, the shortcomings we see in what we're doing, what we need to focus on, and do we think we are able to make an improvement? What kind of improvement can we make?"

So get down to some substantive issues, put those on the table in front of us and give us the opportunity to comment on the ministry's proposed direction. If you do that, then you're able to focus the attention and energies of the entire environmental movement, the ministries and the corporate sector on to common, understood environmental priorities. It allows us to streamline and

focus the activities of each ministry in achieving environmental improvement and enhancement.

A couple of points on specifics on the statement of values: First of all, it allows for the minister's discretion to hold a public hearing. We think that should be stronger. We'd like to see at least a workshop or a hearing on the statements of environmental values. If you've got good public input at this early stage, that will set the tone for good governance and good planning all the way through the process right down to what happens on the ground.

That could seem to be a pretty heavy expense, to hold public hearings on each ministry doing a statement of environmental values, so we suggest it either be integrated into workshops that are looking at a number of ministries or, through the Environmental Commissioner, you can select individual ministries for review at any given point in time, similar to what's already done on the estimates process where you target individual ministries and focus on them each year. It can be done within financial constraints and in an effective process.

Secondly, there's no requirement that once these statements are done, they have to be reviewed. It says the minister can review from time to time or not review from time to time. We've suggested in our environmental strategy that each time a new government is elected, it be charged with preparing an environmental strategy, so that when you've got a new political mandate coming into power, you've got it developing a statement of its mandate in that statement of environmental values. Bear in mind that these statements of environmental values are going to be political statements, statements that the government of the day is standing behind. Therefore, they should be reviewed on a regular basis, and I think one of the best ways is to say that each new government should, at the very least, review and re-endorse, reaffirm its support for its environmental strategy or statement of values.

If we have a strong statement of environmental values, I think it will result in cost savings, it will result in an improved environmental movement in Ontario and it will provide for meaningful consultation at the earliest stage of government planning.

As I mentioned, I remember the question in the earlier session on the Environmental Assessment Act. One of the problems with environmental assessment is that we don't have good direction guiding the environmental assessment process or the planning process. If you have good government direction guiding the planning process, then you will have better projects coming out of that process and the environmental assessment will be a much more focused and effective process than is currently the case.

At the moment, environmental assessment is about our only window of opportunity to get at government policies. So you see things like environmental assess-

ments being used to raise issues about why there is no wetlands statement, what should there be in terms of timber management policy. If you switch that around and put the public consultation up front, you're going to reduce the need for expensive processes at the bottom end and it'll be a much better process and a cheaper process all the way through because the people doing the planning will know what it is they're supposed to address and achieve because it's right there in the statement of environmental values.

In conclusion, again we'd want to express our support for the bill. We think it's one of the most progressive pieces of legislation to come forward in a long time because it does have the potential to address some of the fundamental problems in integrating environment issues into social and economic development questions. We'd like to offer our services in helping develop the guidelines for a statement of environmental values and other aspects and, as Duncan mentioned, the regulations as they come forward. Thank you for your time.

Mr David Johnson: I'd like to thank the Conservation Council of Ontario for not only the deputation but the good work that it does in the province of Ontario. I think in a previous life we have talked about various issues when I was at the municipal level, if I can recall. I found your advice and counsel excellent at that time as well.

I've noted a few words—

Mr Winter: Are they misspelled?

Mr David Johnson: No, no—well, I won't comment. I realize that you had to put this together in a hurry, but that wasn't my point. I picked out a few key words. You mentioned process. You mentioned a detailed description of environmental issues and cost-effective cost savings. I'm going to roll them together.

One of the areas that I am attempting to clarify in Bill 26 is the planning process within the province of Ontario. First of all, it's a lengthy one, and I must say that there's a commission set up to try to streamline that process. The former mayor of the city of Toronto, John Sewell, has been involved with it. It's a process also that involves environmental considerations, first of all at the local level, where there's a process to analyse local input, public hearings—the public are involved—mandatory hearings. Even before that, quite often proponents will get together and meet with the general public and discuss these things, because they don't want to go into a public hearing cold; they want to have it all sorted out. But after the public hearing, after a decision is made, there's quite often an Ontario Municipal Board process, which is a lengthy one, and that involves planning issues, transportation issues, environmental issues.

I'm just trying to determine how this fits in there as well. This seems to be another process put on top of

that process. There's great concern that the process is already too lengthy, and I wondered if you had any specific ideas in that area: how we can avoid duplication, how we can make this cost-effective, how we're not hitting the same issues two, three, four times. Have you had any thoughts about that?

Mr Winter: In my 10 years with the Conservation Council of Ontario, I've had many thoughts on that. I was involved with the public advisory group on the environmental assessment program involvement process, EAPIP, back in, I guess, 1988, 1989. At that time we were saying, with very little impact, that you cannot look at revising the Environmental Assessment Act on its own; you have to look at the planning process, because without good planning and direction to people who are involved in development, you cannot have a good assessment process and you are going to wind up with de facto an expensive environment assessment process because you're trying to correct some of the mistakes that were probably inherent in the process because there weren't good policies and direction at the top.

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So we said that you should link a review of the Planning Act in particular, and probably other legislation, into a review of the Environmental Assessment Act, and say, "What are the requirements for good planning?" On the flip side of that, when the whole Sewell commission was running, we were also saying, "You cannot look at the Planning Act alone; you have to look at environmental assessment and say, 'How is this planning process going to reduce the need for expensive environmental assessment hearings, where possible?' not deny access to courts, not deny the access to environmental assessment and accountability, but to reduce the need for it."

I think it's only when you start integrating and looking at all these things together that you put the people, the planners, the policymakers, the bureaucracy, the politicians in a mindset that says, "We have to integrate this in a way that reduces the cost and gets the results that we want at the bottom line." That's where I think the statement of environmental values has a tremendous potential because it gets all the key stakeholders sitting down around the table at the beginning of the process saying, "At a provincial level, what is important to us and what's the best way of achieving it?"

Mr Wiseman: Underlying all of what you've just said is something that I think we really need to grapple with, and that is that it's not sufficient to go through the entire process and get to the end result which is going to be very negative and still have to do it. There has to be an option of no being no. There has to be an option that when you get to the end of the day and it's not a good project, that it's no; it's not no, maybe. It's no.

You can't tear down that woodlot because it's environmentally sensitive. It doesn't mean you can go in and work around it at some other time, and that's what's missing from a lot of what we're talking about.

I was involved with a process in my community where they wanted to run a sewer line down the middle of the river valley. It wasn't an option to say, "No, don't put it there." It was only an option of "How can we put it there with the least damage," but it's still going to do damage.

Mr Winter: When I started on the environmental review process, they trotted out an example of a successful environmental assessment, and it was Highway 406, I think, from Brockville to Ottawa. Their example of the success of the process was that there were people concerned about a small woodlot and some old trees, and their solution was they diverted the road around that woodlot. That was an environmental assessment to them.

To me an environmental assessment starts with, why do we need this road in the first place; what are the impacts of that road on the agricultural economy and the rural landscape and the environmental landscape; all those tough questions. At the end of the day, you may decide, yes, we still need that road, in spite of the impacts, but at least you've stood up and identified them, had the guts to say, "These are problems, and this is the decision we have to make."

We can't ignore the fact that good governance requires having guts. You've got to be able to stand up and say, "No development on wetlands," or be able to stand up to the environmental community and say, "I'm sorry, we need to develop on wetlands," and face the consequences of an irate environmental movement. But until the government stands up and says, "This is the way it is going to be," then you're going to wind up with a very expensive process of applications for changes in zoning and so on and so on.

The example is, I think up on Lake Simcoe, there was a proposal to put in a new development on a wetland. A request for an environmental assessment of that was made by environment groups and the ministry responded: "We don't think it should have an environmental assessment because it is subject to the new wetlands policy just recently introduced. We refer you to the fact that the wetlands policy says no development on class 1, 2, 3 wetlands. Case closed." You just avoided a very expensive environmental assessment process by making a strong decision.

The thing you have to bear in mind is that to make the process work, there has to be strength at the top. You cannot streamline without strengthening. That's the key thing that has to be there, and the statement of environmental values is the commitment to actually do things.

Mr MacDonald: Just following that up, if I may, the other thing that you have to deal with when you're writing any kind of legislation is the perception out there that many people have, the feeling of alienation, that "There are rules and there are rules, and if I have some resources I can come to Toronto and get myself a couple of good lawyers and I can either tie it up in the courts or they can introduce me to the right people and I can get around any rules." I think it's very important, and this is not something that has just happened in the last six months. I suspect in Ontario it goes back until the first Legislature about 200 years ago.

So what you have to do is to have to set up a system that's open, that's transparent, where people know that you go from step 1 to step 2 to step 3, that everyone is treated fairly in that kind of system and that there is a beginning to the process, there is an end to the process and it doesn't draw in the entire resources of Ontario, Canada and the universe.

I think those are issues that go beyond the Environmental Bill of Rights. It's just saying: "We elected you. We need legislation. Make it open. Allow us the opportunity to have our say, at times, in there."

Those are some of the comments that we wanted to bring out, some of the general comments that are important to dealing with that feeling of alienation that a lot of people are feeling from any kind of institutional process.

Mr Daigeler: Just a quick question. I must say you seem to be some of the experts in the field. When you said, "It's difficult to understand the law, and could you publish something that's more accessible to the ordinary person," that worried me a little bit. I think that brings me to my question: How can one put the principles of this bill to the general public, not just the concerned elite that you do represent but the ordinary public, so that people can understand and feel comfortable with what this bill proposes?

Mr MacDonald: I don't think there's an easy way of doing that. I think you start from the premise that the government is here to serve the needs of the people, and one place to start is by identifying those issues. If you're going to pass legislation, then a simple thing: Write it so people can understand it, so that they read it and say, "Oh, it seems the problem is A and the solution is B." I would say that's probably trying to

reverse over 100 years of tradition where it's basically, "Don't worry; we'll pass laws that will affect you and you vote for us because we're doing a good job." That is a bit of a revolution in there.

I think you just have to keep working at it and you always have to remember that that's one of the points of legislation. If people don't understand it, then they don't know if it's good or not. They will probably start leaning towards "It's probably not good," and then you get into the whole mythology that the problem is government. I think the problem is an institution that is perceived as being insensitive to the particular needs of the people in your riding. I don't think there's an easy solution to that. You just have to keep working at it all the time.

Mr Winter: I remember when the Canadian Environmental Protection Act was being drafted and they came out with a couple of drafts for public review. One column was the actual text and the other column was a description of what it actually said and what it was actually doing. Those who were legal eagles read the one side and the rest of us, whose eyes glaze over when we read legalese, read the other side and said: "Okay, I think I understand what they're trying to do. Now I can red-pen it." That would be a simple way of addressing that and making it more accessible for those who want to understand the act itself and the powers they have because of the act.

The other way is going to be just in the way the Environmental Commissioner and the registry communicate information to the public. Hopefully you've got some good communication skills there so that people don't necessarily have to refer to the act to know what their rights are, that there is someone telling them and assisting them.

The Chair: Thank you, gentlemen, for appearing today, especially on short notice. We did get the brief, so boy, you're efficient. Thank you very much for appearing.

For the members, I would indicate to you that public hearings will continue next Thursday morning at 10 am. The clerk is scheduling the people according to the motion of the committee. Thank you very much. We're adjourned.

The committee adjourned at 1800.

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**Standing committee on
general government**

**Comité permanent des
affaires gouvernementales**

Environmental Bill of Rights, 1993

Charte des droits environnementaux
de 1993

Chair: Michael A. Brown
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STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday 28 October 1993

The committee met at 1000 in committee room 2.

ENVIRONMENTAL BILL OF RIGHTS, 1993

CHARTRE DES DROITS

ENVIRONNEMENTAUX DE 1993

Consideration of Bill 26, An Act respecting Environmental Rights in Ontario / Projet de loi 26, Loi concernant les droits environnementaux en Ontario.

The Vice-Chair (Mr Hans Daigeler): We are here this morning to continue public hearings on Bill 26, An Act respecting Environmental Rights in Ontario. Since we do have many witnesses to appear, I would like to get started. However, before we do, I understand the government whip pro tem would like to put forward a motion that I think he has circulated to all three parties. Did you want to speak to it?

Mr Jim Wiseman (Durham West): I'd just like to move that motion and hope we could have speedy passage of it.

I move that the clerk be authorized to schedule witnesses on the morning and afternoon of November 4, 1993, from the list of witnesses who have already contacted him. Witnesses will be scheduled on a first-come, first-served basis from the existing list. Presentations to the committee on November 4, 1993, will be 20 minutes in length for each witness, with the afternoon session starting at 3:30;

That the AMO will be allowed to reschedule its appearance before the committee from October 28 to November 4, 1993;

That the Chiefs of Ontario be invited to appear before the committee on the morning of November 4, 1993. If they are unable to appear in the morning, they shall be given the opportunity to appear in the afternoon of November 4, 1993;

That having heard from all the witnesses on the existing list of requests, that clause-by-clause consideration of the bill begin on November 18, 1993.

I think I've discussed the reasons for this with the committee members. I would hope we could have speedy passage of this.

The Vice-Chair: Is there any discussion?

Mr David Johnson (Don Mills): This is in line with what we were suggesting in the first instance, so I'll support it. I'll be interested to see how all the deputations can be accommodated in the one extra day. I would have thought an extra two days might have been required. At any rate, it's certainly a step in the right direction, so I'll support it.

The Vice-Chair: Any further discussion? All in favour? Carried.

LIDLAW WASTE SYSTEMS LTD

The Vice-Chair: The first presenter is Mr Pazner, from Laidlaw, if he will please come forward. I think you're familiar with the procedure; you've appeared

many times, so I don't need to explain it. Would you introduce the lady who's with you and yourself as well, just for Hansard.

Mr Frank Pazner: My name is Frank Pazner. I'm vice-president of Laidlaw Waste Systems. With me is Dianne Lemieux, our solicitor.

The Vice-Chair: Today it's only 20 minutes; I think you're aware of that. Obviously, if you can leave some time for questions, it would be appreciated.

Mr Pazner: Thank you very much, Mr Chairman, for the opportunity to be here today. Laidlaw Waste Systems supports in principle what has generally become known in the province as the Environmental Bill of Rights. Laidlaw believes that the public has a right to participate in decisions involving the environment and fully supports any process that involves the public.

However, Laidlaw must be concerned with any process that shifts the regulatory and enforcement powers to individuals from government bodies and agencies as well as the pieces of legislation that already deal with these matters, which Laidlaw believes to be the case with the Environmental Bill of Rights.

The Ministry of Environment and Energy has stated that one of the benefits of this bill is that business will have a uniform and predictable process for obtaining environmental approvals. Laidlaw is not convinced that the Environmental Bill of Rights establishes a clear-cut, timely approval process. If anything, we are concerned that the bill will delay the approval processes already in place, in particular those approval processes established under the Environmental Protection Act, the Environmental Assessment Act and the Ontario Water Resources Act where waste management companies such as Laidlaw are subject to obtaining certificates of approval.

Our submissions will follow the proposed outline of the bill and start with part I, definition and purposes. Having reviewed the definitions section, section 1 of the bill, we support the submission of the Canadian Bar Association that the definitions should be consistent with those established under the Environmental Protection Act.

It's also our submission that certain expressions noted periodically throughout the bill should be included in the definitions section. This will ensure that all parties are working from the same definitions and the courts will not be burdened with applications for interpretation of these vague expressions. Expressions such as "unreasonable threat," "environmentally significant proposals," "significant harm" and "a response that is not reasonable" are so vague as to be of no assistance to anyone and leave the door open for many interpretations. By defining these expressions in the bill, a level playing field will be created as a uniform decision will be applied by all the parties. This will also be of assistance to the courts in providing guidance as to what the legislators had in mind when inserting these expressions in the bill.

Part II, public participation in government decision-making: This part sets out the minimum levels of public participation for certain environmentally significant proposals associated with policies, acts, regulations and instruments. We will limit our comments to the proposals involving instruments, as this is the area of the bill where Laidlaw could be the most directly affected. Laidlaw's facilities operate under conditions contained in certificates of approval issued by the MOEE.

We wish to note at the outset that there appears to be a preference in favour of government policies, acts and regulations, as they are not subject to the same public participation and review requirements as proposals involving instruments. For example, section 24 of the bill refers to the possibility of oral presentations, public meetings, mediation and other public participation processes in connection with class II proposals for instruments. There are no such requirements for policies, acts and regulations.

It is our submission that applications submitted to the MOEE pursuant to the provisions of the Environmental Protection Act, the Environmental Assessment Act and the Ontario Water Resources Act should not be subject to parts II, IV and V of the bill and that the definition of "instrument" in section 1 of the bill be amended accordingly.

Waste management undertakings in particular go through a rigorous environmental approvals process and those members of the public who have a direct interest in the application are involved. If any instrument is subject to the public participation process outlined in section 24 of the bill, it should not be subject to appeal by any resident in Ontario if the ministry decides to proceed with the instrument. Public participation will have taken place, and an appeal process would simply afford the public another opportunity to further delay and increase the cost of the approval process.

This appeal process by a member of the public, with all due respect, does not provide any certainty to the approval process. In our submission, there must be a defined limitation to public participation. These sections in part II that allow an appeal by an Ontario resident of any ministry decision should be limited only to those decisions which revoke an instrument. If this is not acceptable to the committee, we propose an alternative that subsection 26(7) and section 38 of the bill be amended to limit the appeal process only to those persons who previously participated in the process.

As for public comments received by the ministry, there does not appear to be any provision to provide these comments to the proponent of the instrument. Given the fact that the ministry will be making a crucial decision with the assistance of this public information, the proponent should have the right to receive and reply to these submissions.

We suggest that section 35 of the bill be amended to require that public submissions be provided to the proponent of an instrument and that the proponent of the instrument be given an opportunity to respond to the public's submissions prior to a decision being made by the ministry.

Section 30 exempts proposals from the registry that require public participation that is "substantially equivalent" to the process under the bill. Firstly, the expression "substantially equivalent" is so vague that valuable court time could be spent just to define this expression. This expression should be included in the definitions section of the act.

Second, we have a concern with the wording in subsection 30(1)(b), as there is no actual legislative requirement in the Environmental Protection Act and the Environmental Assessment Act for public consultation, yet public consultation is carried out as a matter of course when applying for approval of an undertaking under both these statutes. Any public consultation carried out by a proponent is either voluntary or as the result of policy statements issued by the environmental assessment branch of the MOEE.

It is our further submission that part II of the bill will make the approval process considerably more onerous for those types of instruments that do not require a hearing. In our submission, those applications exempted from section 30 of the Environmental Protection Act by regulation 347 would be considered class I proposals. Under subsection 20(10) of the bill they would not require a hearing. However, subsection 26(1) of the bill states that a minister may treat class I proposals as class II proposals, which under the bill could require additional public participation as outlined in subsection 24(1).

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The Environmental Bill of Rights therefore takes away the certainty of the approval process created by the amendment to regulation 347 to replace it with the uncertainty of ministerial discretion. In our submission, the Environmental Bill of Rights will defeat the initiatives implemented by the MOEE to improve and streamline the approvals process.

For these reasons, it is our submission that applications under the Environmental Protection Act, the Environmental Assessment Act and the Ontario Water Resources Act not be subject to the bill and that the definition of "instrument" be amended as proposed by Laidlaw.

Part III, the Environmental Commissioner: We feel that the creation of the Environmental Commissioner is a duplication of the functions of the MOEE. There are no provisions in the bill that convince us at this time that the commissioner has any real power or that his staff will do a better job than the MOEE already provides.

The commissioner does not appear to have any disciplinary powers for those ministries that do not comply with the bill. A level playing field does not exist, as certain instruments are made subject to the act without any right of appeal. The proponent or the holder of an instrument must comply with the process outlined in the bill, whereas the designated ministries may choose simply not to comply with the bill without the public or Environmental Commissioner having any right of recourse.

Part IV, application for review: If the committee does not accept our proposed amendment to the definition of "instrument," we submit that the existing waste management instruments be exempted from the application of

part IV of the bill. In the alternative, we submit that those waste management instruments that have been the subject of a hearing under the Environmental Protection Act, the Environmental Assessment Act or the Ontario Water Resources Act, as well as waste management instruments that were obtained after public participation, should be exempted from the application of part IV. This amendment would not be necessary if the committee accepts our proposed amendment to the definition of the word "instrument."

In keeping with our comments in connection with section 35, subsection 66(1) of the bill should be amended to specifically include the holder of any instrument under review. This amendment merely adds some certainty that the person most directly affected is kept informed of an application for review. In addition, subsection 66(1) should be amended to provide that the holder of the instrument will be provided with the information required to be submitted under subsection 61(3) by the person making the request for review.

Section 72 as well as section 81 under part V of the bill should be deleted or amended to exclude instruments from this section. Laidlaw, as a holder of an existing instrument, has the right to know who is requesting a review of an existing instrument. Every defendant has the right to know his or her accuser. The confidentiality provision merely protects those environmental groups and corporate competitors that may be the initiators of frivolous and unfounded applications for review, interfering with one's right to carry on business.

Part V, application for investigation: Subsection 74(1) duplicates the powers of the investigation and enforcement branch of the MOEE. There will be a delay in initiating an investigation by involving the commissioner. Even if the committee accepts our proposal to amend the definition of "instrument," section 76 of the bill should be amended so that the minister is required to (1) provide notice to the owner-operator that a request for investigation has been received, (2) provide the information received under subsections 74(2) and 74(3), and (3) advise that an investigation will proceed. The owner and operator should not have to learn about the request for investigation after the decision has been made and denied, as section 78 of the bill provides.

Part VI, right to sue: Part VI does not appear to give a defendant the right to be considered innocent until proven guilty. Sections 83 and 84 should be amended to refer to any "alleged" contravention, as does subsection 74(1) under part V of the bill.

Further, Laidlaw is concerned that part VI will cause the courts to become backlogged with the proliferation of court cases. The MOEE is of the opinion that the steps outlined in subsection 84(2) will limit the number of court cases. In our opinion, these steps are so vague that anyone can bring an action in court. For example, under clause 84(2)(b), any response that refuses an investigation could, in all likelihood, be deemed by the person making the request for investigation an unreasonable response. A court case could ensue. All these court actions and associated costs will increase the cost of doing business.

If a minister denies a request for investigation on the

basis of those considerations set out in subsection 77(2) of the bill, a member of the public should not have the right to bring a court action. If not, all this review by the minister does is delay the inevitable: the bringing of a court action.

The defences outlined in subsections 85(1) through (4) of the bill should be included in the list of considerations that the minister must consider in deciding whether to order an investigation, and we submit that subsection 77(2) of the bill should be amended to include each of the defences outlined in section 85 of the bill. If the minister denies the application for investigation on the basis of one of these acceptable defences, a member of the public should not be given the right to initiate a court action. This is a waste of the court's time and at great expense to the defendant and adds to the cost of business.

Therefore, we submit that subsection 84(2) be amended as follows: (1) define the vague expressions as outlined in our submissions under part I; (2) if the minister has denied the application for investigation on the basis of those considerations outlined in subsection 77(2), as amended by Laidlaw's proposal, no court action can be brought by a member of the public. It is our further submission that subsection 84(2) of the bill should be amended so that a person cannot bring an action if charges have already been brought by the responsible ministry or if an ongoing investigation is being carried out by the ministry.

Notice of any court action should not be included in the registry. Only those persons directly affected need to be involved in the court action. Laidlaw is concerned that sections like subsections 87(6) and 89(1) will turn a court proceeding into a mini EPA or EA hearing with the financial loser being the defendant, even if the plaintiff's claim is dismissed. Further, the criteria that the court should consider in allowing a person to become a party should be clearly set out in the bill to avoid any confusion at a later date.

Part VII, employer reprisals: We have no concerns with part VII of the bill and fully support this section.

Part VIII, general: In our respectful submission, section 118 is a further example of the bill's bias against holders of instruments. Subsection 118(2) provides that a judicial review application can be filed if a minister has failed to comply with the requirements of part II of the bill respecting a proposal for an instrument. Part II of the bill also applies to policies, acts and regulations.

In conclusion, we wish to reiterate our support in principle for the Environmental Bill of Rights. In our respectful submission, however, Bill 26, in its present form, should not be passed as this bill leaves too many matters to ministerial discretion and there appears to be a bias against instruments which, more often than not, will affect proposed development by the private sector. A number of our concerns will be addressed if the committee amends the definition of "instrument" as we suggest. The waste management industry is currently heavily regulated by conditions of operation contained in certificates of approval. Bill 26 adds very little to the process and, in our respectful submission, will negatively impact the approvals process for waste management applications.

We hope our submissions have been of assistance and we'd be pleased to answer any questions.

1020

The Vice-Chair: Thank you very much, Mr Pazner. We have one minute left, basically, so one very, very quick question from each caucus.

Mr Steven Offer (Mississauga North): Thank you for your presentation. I certainly am going to re-read the presentation around the issue of instruments, but my question is, when you take a look at the bill as a whole, do you believe it provides the public with any more rights or rather adds a potential level in the decision-making process in terms of, for instance, instruments?

Mr Pazner: I'll defer to our solicitor. Dianne spends more time appearing in front of the actual EA hearings and EPA hearings.

Ms Dianne Lemieux: I believe the bill is attempting to add rights to the citizens, but in fact there's so much in the bill that's left to ministerial discretion that as a member of the public, I myself don't really know what my rights are. In terms of process, I don't think it's adding anything to the process that we at Laidlaw have to follow in terms of environmental approvals. It certainly may add to the processes for the other ministries that may be subject to the bill.

Mr David Johnson: An excellent presentation, hard to absorb in 20 minutes. Is one of your concerns that you go through a certain number of processes at present with regard to waste management, environmental assessment, protection etc and that this is a duplication to a certain degree, or is this adding another layer?

Ms Lemieux: It's both. It is definitely adding another layer, and it's certainly duplication of what is already being undertaken by Laidlaw to obtain approval for our facilities such as landfills and transfer stations.

Mr Wiseman: I'd just make a quick comment. The residents who live in my riding around the Brock West landfill site don't think this bill goes far enough in giving them the right to take both governments and others to court with respect to landfill sites. If I read this correctly, am I correct in assuming that you say it goes too far?

Mr Pazner: We think there's a process that's in place, and once you've gone through the process, all this does is merely reopen it again so you never get out of the loop. We have spent tens of millions of dollars on getting approvals and you can't get the final certification because there's always somebody else coming in, after the fact, being included as part of the process.

The process has to start and finish somewhere. You can't just continue. To have two people come up and object to something after you've gone through months and years of hearings I think is frivolous. Citizens certainly have a right, but they should be involved in the process at the beginning, and once the process is concluded then I feel a decision has to be made and a certificate should be issued.

The Vice-Chair: Thank you for your presentation. I know 20 minutes is awfully short for something as significant as this, but as you understand we have many other presenters.

NORTHWATCH

The Vice-Chair: The next witness is Brennain Lloyd from Northwatch, if you'd come forward and take a seat.

Ms Brennain Lloyd: My name is Brennain Lloyd. I work with Northwatch. We're a coalition of community-based environmental groups across northeastern Ontario. In terms of geography, our membership goes from the Almaguin north of the northern Muskokas to the Moose River basin, from the Nipissing-Timiskaming line over to the east coast of Lake Superior; quite a large region, and quite a broad range of issues and concerns that our membership and our communities address.

Northwatch is an advocate for the environment. More specifically, we're an advocate for the incorporation of environmental considerations into all aspects of social and economic decision-making and planning, given the great impact on the natural environment that our social and economic decisions and activities have.

We address issues that affect the forest. We address energy issues, waste management, waste disposal, waste reduction, mining, militarization and other issues of general concern in planning in our region.

We work from a perspective where we see the north as having a history and having had a historical relationship to the south, where the north has been treated and viewed largely as a commodity, and an economic commodity, rather than as a community or a community of communities, including both the natural communities and the human communities. That perspective really directs us in how we work and really directs us to our most fundamental positions, positions that require sustainability as being the litmus test, or sustainability as being the driver for all our decisions and plans. By "sustainability," we mean primarily ecological security—that's paramount—but also sustainability of the communities and economic stability. We think that to arrive at that sustainability, we have to recognize that the land must dictate its limits and the land must dictate what it can provide.

It's from that perspective that we view the bill of rights and it's from that perspective that we welcome the Environmental Bill of Rights and support Bill 26, which is the bill before us all today. I'm going to provide some general comments, walk through the bill and provide those comments from our region and from our perspective and from an environmental imperative or priority.

In general, I want to say that we view the bill very positively. The intent of the purposes sections I think demonstrates good cause for that positive reception: "to protect, conserve and...restore the integrity of the environment," "to provide sustainability of the environment...and to protect the right to a healthful environment." Those are three purposes of utmost importance, and we're so pleased to see them captured in this bill.

We have some specific comments, that might be semantic but perhaps are not, that we'd like to make with respect to those, but not until we've really said very clearly that we support the purpose of the bill and we think the purpose follows very well from the preamble, which I think is also very important, a preamble which recognizes the inherent value of the natural environment.

That is perhaps the most fundamental statement in the bill and is a fundamental law that this bill provides us.

In details, with regard to 2(b) of the purposes, "to provide sustainability of the environment," I think it's necessary to correct our thinking and correct our language at some point. We have to recognize that we can't provide sustainability of the environment, that the environment is unto itself sustainable, sustains itself. We can't provide that sustainability. We can, however, deprive the environment of its sustainability, so we accept that statement to mean that providing sustainability will translate that we won't deprive the environment of its sustainability or its ability to sustain itself.

The second point is on 2(c), "to protect the right to a healthful environment." I think it's important for what it achieves, ie, it acknowledges and affirms the right to a healthful environment. From a human perspective that's very important, but I think it's also significant for what it almost achieves. What I believe it almost achieves is that it almost recognizes the rights of the natural environment itself. Really, over the centuries I think we've seen that progressively we've been more encompassing in what we recognize as rights. We now recognize the rights of women, we recognize the rights of humans, we recognize the rights of children, we recognize animal rights. It's time to recognize the rights of the natural world, and I think that's what's almost achieved in 2(c).

Section 2 in totality has what I would call a cumulative effect, a positive cumulative effect that fairly responds to the interests of the people of Ontario, and the interests of the people of Ontario is the recognition of the inherent value of the environment.

Going on to discussion of the statement of values, which arises in part II of the bill, we're also very positive about this section. That positive response rests on our view that the statement of values could be the main driver for environmental standards in general and for the standard of care that the various ministries provide through their governance, but because it's so important, we have a couple of areas of concern that emerge as we look at that.

1030

The first concern, a fairly specific one, is in clause 7(b), where we see that "consideration of the purposes of this act should be integrated with other considerations." I would just apply a note of caution there. What's valuable about this act is that it establishes the rights of the environment and establishes, I believe, an environmental paramountcy. I would give a word of caution about 7(b) because I think that undermines the environmental imperative somewhat, or it could potentially do that.

The second set of concerns that arise there first emerge in 7(a), where we see a discussion of "significant." This is a concern that in our reading of the bill emerged again and again, but I'll raise it here. We have some concerns about how the word "significant" is used, how significance is judged or measured, and that's very much coupled with our concerns about discretion and how discretion is afforded throughout the bill. Ministerial discretion is the primary example of that.

There are a number of examples. The first one arises just given that we will have a discretionary interpretation of what is "significant." We again see it in item 14, where we have the discussion of "significant effect on the environment." Discretion arises a third time in section 118 in Part VIII of the bill.

Generally, our concerns are twofold: (1) There's a large degree of discretion afforded which we have concerns and cautions about, and (2) nowhere in the discussion of significance and the measuring of significance is there any recognition of the cumulative effects of impacts. Our concern is that if in each instance we were to have a discretionary assessment made of whether or not an effect or impact is significant, at no place do we have an opportunity to look at the cumulative impact of all those effects, which have perhaps individually been judged again and again to not be so significant but collectively or cumulatively could be very significant. That's a very general, broad concern we have, one that I would classify generally as being that we could be subject to the tyranny of incremental decision-making. We could be having one decision made here and one decision made here and one decision made here, but collectively we won't see the impact.

I could find many evidences or many examples of that, certainly in forest management or in timber management, but I'll leave you with simply having made the point.

In item 11—this is again in the statement of values—we have: "The minister shall take every reasonable step to ensure that the ministry statement of environmental values is considered whenever decisions that might significantly affect the environment are made in the ministry."

I think this is far too qualified. I think the bill needs to state simply, "The minister will ensure that the ministry statement of environmental values is considered." I think to "take every reasonable step" would mean the statement of environmental values had been considered, so "the minister will ensure."

Our next set of comments is in classifications of proposals for instruments, which begins around item 19. We have a very general comment there, that there should be a clearly laid out role for the public in the classification of proposals for instruments. I don't see that in the bill, and I think that's essential.

Moving to the discussion of the Environmental Commissioner, it's a very positive reaction we have to the section in total. I think the Environmental Commissioner's role is relatively well-thought-out and to a fair degree is a positive role and has some potential for good effect. What I see lacking there is a parallel function for the public.

In section 57 we see the Environmental Commissioner's role laid out very clearly in terms of the government and the ministry and assistance to the minister, assistance in developing a ministry statement of environmental values, but there isn't any outlining of responsibilities with respect to the public and enabling the public and providing access to the public. We need somewhere, and I think the Environmental Commissioner's office is the place, for the public to go and ask these questions: "How

does this bill work? How do I use it? How do I access the registry? How do I become involved in this decision-making process? What is my role as a member of the public?" I think that's really lacking from item 57 and from the outline of the commissioner's roles and functions.

In the application for review and investigation—I'll address those two items, part IV and part V, together—to our thinking these are most important because they give the public access to action. We have a sense in the regions that there might be laws, there might be rules, there might be regulations, there might be standards, but if they're not being met we have no remedy to that. I think parts IV and V give us that remedy, give us that ability to require a review, to require an investigation, to require action, and there are some clearly laid out steps, procedures, deadlines, time lines and so on.

Those are incredibly important, particularly to members of the public who do not have as much access to government offices, who are not as familiar with government processes. This is a question of access and equity. It gives those of us in smaller communities in northern Ontario increased access, so greater equity. For example, it puts a citizen in Attawapiskat closer to the same ground as a full-time staff person for an industrial association living in downtown Toronto. Right now there's no comparison in terms of access to decision-making.

Section 122 on the making of regulations: Again we need it clearly set out what the roles are for the public in the development of regulations, and this section of the bill should provide that clarification. It should clarify also that the Environmental Commissioner has a role, which is not laid out in 57 and 59, where we discuss the Environmental Commissioner's role. I see my time is running, so I will try and run.

The next point I'd like to comment on is that of the registry. We are again very supportive of the registry but have some qualifiers to that support. There are two concerns we have quite specifically. We're assuming there is going to be an electronic registry; there were some comments to that effect made in some of the release materials so we're assuming that will be the case.

We have two very specific concerns, again related to access and equity. One is item 122(g), which discusses "prescribing fees that may be charged in relation to the use of the registry." Again it's a question of access, and what we want is a bill that provides us with access to information. Prescribing of fees in some instances, perhaps photocopying of documents and so on, might be reasonable, but accessing the information itself, accessing the registry itself, would not be reasonable.

Just one very parochial point from rural northern Ontario: Accessing electronic registries is not always as easy as it might be assumed from a major centre. I know this will be discussed in the regulations. I'm not clear yet what the public role is going to be in developing those regulations, but quite specifically we need an electronic registry which can be accessed from anywhere in the province. That means a 1-800 line for modem hookup. It means not having to go through Datapac, it means not

having to be on-line for a long time. If you're on a party line in rural northern Ontario, it's long-distance to Datapac and it's very difficult to be on the line for longer than a very short time. I think those concerns have to be kept on the table.

1040

The Vice-Chair: There are about three minutes left.

Ms Lloyd: I'll just wrap up there; I'll leave some time for questions. I want to conclude by saying the bill is a very positive step forward. I want to thank you for your work on it, and I want to thank the two ministers who've brought this bill forward for their commitment to making a much-talked-about bill and a long-called-for bill come to life and come to law.

The Vice-Chair: Thank you very much for your presentation. One brief question from each caucus.

Mr David Tilson (Dufferin-Peel): I would like you to respond. One of the major criticisms of this bill is that it will create much bureaucracy. The processes will be slowed down; applications of all kinds, to all areas of our economic life, will be slowed down. The ministries themselves, although they're being cut down in staff now because of the social contract and the recession, may not be able to perform the very work they're doing now. They are being downsized; the Ministry of the Environment itself.

With this bill, members of the public—the individual's right, which is really what this bill is all about—will put pressures on those specific ministries which will take them away from doing other work, and this layer of bureaucracy, the whole process, will be slowed down substantially. Could you comment on that criticism?

Ms Lloyd: I don't see it that way. I actually see that this bill gives us the ability to have more efficient decision-making because we'll have more accessible decision-making. The rules will be made clearer by this bill, and I think the premises on which the rules are set out will be clearer. To give you one example of how I think that will work, the Ministry of Natural Resources at this point has, at last count, 37 different policy initiatives ongoing at the same time. I think the statement of environmental values could be the much-needed pressure to bring them together and to say, "Here is our statement of environmental values; this is our policy," and the others fit within that or flow from there.

It's going to require some efficiency measures ministry by ministry. It's going to clarify a lot of things. It's going to make the maze crystal-clear.

The Vice-Chair: I'm sorry to interrupt, but we are getting—

Mr Wiseman: Maybe we should skip the rest of the questions and move on to the next presenter. We can ask the first question next time.

The Vice-Chair: Fine. Do you have any other questions? Mr Offer, please.

Mr Offer: Thank you very much for your presentation. In light of the discussions around clause 7(b), is it your expectation that the statement of values will, in the 14 prescribed ministries, establish environment as a priority in terms of policymaking?

Ms Lloyd: I think it should establish the environmental imperative. Economic and social decision-making cannot conflict with environmental sustainability, so I expect the environmental statement of values will establish that.

The Vice-Chair: I think Mr Lessard had a very quick answer to one of your questions.

Mr Wayne Lessard (Windsor-Walkerville): I just wanted to address one of your questions with respect to accessibility and the electronic registry. It is our intention at this point to have free access by a 1-800 number for modems and access to various computer networks in the province as well.

The Vice-Chair: Thank you for your presentation. We're sorry we have to rush you so much, but 20 minutes is not a very long time.

CITIZENS NETWORK ON WASTE MANAGEMENT

The Vice-Chair: The next presenter is John Jackson from the Citizens Network on Waste Management. If you'd take a seat, please, you can begin right away.

Mr John Jackson: I'm John Jackson. I live in Kitchener and I've worked for basically the past 15 years with a wide range of citizen groups throughout Ontario, mainly on waste issues, on contamination issues, also on Great Lakes issues. The citizens network is a network of approximately 50 groups from all across the province who are concerned about these sorts of issues.

What I'm going to do today instead of going into detail—I think you're getting a lot of that from other people. What I want to focus on today is, from our experience, why this bill is so important to us. What sorts of differences will it make if we have this bill in? I'll give you some very concrete examples of situations it would help with.

First, in terms of the presence of the environmental register, it's very important to us. Let me give you an example. I do a lot of work with groups on the St Clair River and the concerns about what sort of discharges are going into the river there. We don't know when a company in the Chemical Valley applies for a discharge permit. The citizens living there in those communities have no way to find that out. It's critical to have that sort of information so we can try to make some input into whether the discharge they're applying for is acceptable for those people living on that river or not. The environmental registry could give us access to that sort of information.

In terms of the right to be notified and to be involved in making comments on proposals for instruments, again not only do we not have the right to know what sorts of permits someone is applying for for a discharge, we also don't have the right to comment on their application in terms of what contaminants they're going to put out into the environment.

This bill is critical for allowing citizens all across the province—in each of our little communities, permits are given all the time, certificates of approval, by the ministry to allow discharges, which none of us has the opportunity to comment on, first of all because we don't even know they exist, but secondly, even if we knew they

existed, there's no formal mechanism to allow us to make input. That's absolutely critical for all of us. Another prime example where there's no guarantee of us having input is in control orders on a company for something such as a cleanup.

It is becoming an increasing practice of the Minister of Environment on a major cleanup project to consult with the community, but there's no promise, no assurance of that. It simply happens on a piecemeal basis and basically on the goodwill of local Ministry of Environment staff who may be in that community, but we have no assurance that will happen. This will give us the assurance. What could be more important to a community than to have the right to make input into the sort of cleanup orders that are going to be given to a company that is there and that is creating problems?

One of the things that won't actually change—a lot of our work is on waste issues and hearings in terms of applications for opening a new landfill, for example. It's very clear in the legislation that once a hearing has occurred under either the Environmental Assessment Act or the Environmental Protection Act, there won't be any new appeal rights that didn't exist before. That really isn't making a change in that respect, but we're satisfied with the mechanisms that already exist in terms of those formal hearing processes.

Another right that would be added by this bill is what's called the right to seek leave to appeal a decision. In this case, what I want to refer to specifically is that when a certificate of approval is given without a formal public hearing, say for a certificate of approval for a discharge, the polluter has the right to appeal to the Environmental Appeal Board if it thinks that's too tough, but the local citizens don't have the right to appeal if they think it's too lenient.

A prime example of what can happen here is in the Uniroyal case in Elmira in the discharge of NDMA, which caused them to close down the water supply. The ministry gave an order in terms of what would be an acceptable level of NDMA discharge. Fortunately for the community, Uniroyal appealed that. If they had not appealed it, the citizens would have had no opportunity to require an appeal hearing. What came out of the hearing, because Uniroyal appealed it, is that the appeal board said that what the ministry allowed to happen in terms of NDMA discharge was too lenient. They actually came up with a decision that was tougher, more strict than what the ministry had allowed. That happened very largely as a result of the local community group bringing in experts to that hearing and making it clear what the real dangers of NDMA were. But if Uniroyal had not itself initiated the appeal, the citizens would not have had the opportunity to bring that evidence before an appeal board, would not have had the opportunity to initiate it.

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In our minds, this is one of the most critical changes in the provisions here: the right to appeal a decision not simply by a polluter, who already has that right, but by the community that is trying to protect itself.

Another right given here is the right to review, which I'm sure you've heard a lot about, and I want to give a

couple of concrete examples of why this is important for us, a couple of quite controversial issues at the moment.

The first is on the IWA's search for sites for its three mega-landfills and the whole Waste Management Act. I've been working in a coordinating capacity with citizen groups around those sites that are the present targets, and from the evidence that's coming forward from our experts it's clear that it is very feasible for us to achieve more than a 50% reduction of waste through the 3Rs—we'll actually be releasing material on that about a week from now—but we have no mechanism to really have that make a change through the formal mechanisms. There's no mechanism to review the Waste Management Act formally; there's no mechanism to require the IWA to review that policy because it's something given to it by the ministry from on high. The other policy that's a major concern to us is: Why only three megadumps? Is that indeed the best way to take care of the disposal problem? But we've no mechanism now to initiate having those policies reviewed.

The second issue I want to raise in terms of right to review is the Ontario Waste Management Corp, and also the application which Laidlaw recently dropped for a rotary kiln to be built near Sarnia. One of the main problems the citizen groups have in both of those communities is that we don't have a hazardous waste policy in this province; everything's done on a piecemeal basis. We've just finished three and a half years of lengthy hearings on the OWMC for a hazardous waste site the province wants to build. The hearing board said, "Our role here is not to develop a policy, but indeed you are correct: There is not a policy framework within which we can make this decision."

I think we need to have a revision in this Environmental Bill of Rights to make sure that not only do we have the right to ask for a review of existing policies but that we have the right to ask for the creation of a new policy. It's not clear to me from my reading of this bill that that right's there. The lawyers would know better than I. But it's clear we must have that right to initiate looking at new policies. Hazardous waste is a prime example.

Another power given here is the ability to apply for investigations. I'm sure you all get calls all the time from local citizens complaining about a discharge they saw into the local creek—where is it coming from?; what's causing it?—or discoloured smoke they saw coming out of a stack: What's really causing this?

The experience for the local community residents, why they end up calling you in their frustration, is that they call the responsible government agencies and they're usually sort of shunted aside. People are too busy to deal with it or they don't really take it seriously, and you're made to feel like you're some sort of nut for even raising this sort of issue.

It's critical that this right exist to ask for an investigation so that we have to be formally responded to. If they choose not to investigate, they have to formally, in writing, say why not. That's a very critical right to give to all of us.

The final right I want to raise is the one to protect

workers from employer reprisals. It is indeed the people who work in these facilities who know what's really going on. If we want to protect the environment, we have to make sure that the workers have the ability to come to the Ministry of Environment and Energy or whoever and raise the concerns they have without the fear of being punished for it. Time and time again we have examples where workers have been punished for it or have been afraid to come forward because of not being promised, not having an assurance that they'll be protected, an incredibly important right.

The final thing I wanted to raise is the right to sue. From the perspective of the local citizen groups, that's not a right that we're likely to be using at all. These other rights are the critical ones to us. Suing is an incredibly expensive undertaking, an incredibly energy-consuming undertaking. We're going to be using the other mechanisms to try to solve the problems. Therefore, the fears that tend to be out there that we're just going to be swamped with lawsuits are completely inaccurate, because it's only going to be in the very serious, major case that a lawsuit arises. In those cases, it deserves to arise and it should happen. But those are the high-profile things, and therefore they affect our vision of the entire thing that's happening.

Another example of how that happens is, say, with the Environmental Assessment Act, which often runs into a lot of criticism because of some of those major, huge hearings that have gone on endlessly. But even though we all have problems with those major hearings—having just finished one, I have major problems with them and certainly don't want to go through one again—I don't want that right to be taken away. Also, it's important to remember that most things that happen within the assessment act happen without a hearing, and therefore these other mechanisms are really important.

To conclude, I just want to say that for those local community groups, this bill is an incredibly important step forward and is something we are really excited about having passed.

The Acting Chair (Mr Ron Eddy): Thank you for your presentation, and time for a few questions.

Mr Wiseman: I just wanted to go back to this idea. Laidlaw this morning in its presentation said that it is not convinced the environmental right establishes a clear-cut, timely approval process. Could you comment on that?

Mr John Jackson: I'm not sure what they meant by a timely approval process, but I think very clearly it lays out the rights for people to be involved, the rights for people to at least have the opportunity to request to have something reviewed and, if the minister decides not to do a review, to have to give rational reasons for not doing it. That alone—the discretion issue has been raised a lot, but the fact that there's requirement to in writing give real reasons for not proceeding with action is a very important step forward.

Mr Wiseman: Do you think that in some severe cases, though, there will be lawsuits, that community groups will be able to sue?

Mr John Jackson: Inevitably it will happen in some

cases. Those are the critical issues where, having gone through all the other mechanism, be it trying to persuade a company to change its behaviour or trying to persuade governments to be tougher, we may simply have to take action in the final step. But it's important to recognize that that will be the final step after having tried all other procedures first.

Mr Wiseman: My local community group would like to sue Metropolitan Toronto for its mismanagement of the Brock West mega-landfill site, which is leaching all over the place, and Brock North as well. Would this bill allow them to do that?

Mr John Jackson: I'm not a lawyer, so I'm not the proper person to ask, quite frankly.

Mr Offer: Thank you, John, for your presentation. In the short time allotted to us, I want to talk about one area that you brought forward, and that was the whole issue around application for review. I know you've indicated you're not a lawyer, but you brought forward it and used the example of the 3Rs policy and Bill 143, that it was your impression that under the bill you would not be able to use the bill to revisit the 3Rs policy.

Mr John Jackson: No, there were two examples I gave. The OWMC case I wasn't sure we'd be able to because that was a new policy, the hazardous waste policy. I think in this case we could use it, because the Waste Management Act is specifically referred to as one of the pieces of legislation that the bill applies to and it's an existing policy, so I would think we would be able to use it.

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Mr Offer: In your presentation, I thought I heard you say, and please correct me if I'm wrong, that you felt 50% of waste could be reduced and you were concerned that this would not be eligible for review.

Mr John Jackson: I will correct it. I'm sorry, I may not have said it clearly enough. The current policy is 50%. In material we'll be giving you about a week from now, we're saying the numbers can be much higher, from some very detailed studies of waste in this community. Before the Environmental Bill of Rights exists, I'm not confident we will have the mechanism to have that reviewed. With the bill of rights, I then am confident we would have the mechanism to have that policy reviewed.

Mr Offer: That's good to hear, because I was going to bring forward subsections 61(1) and (2), which I thought would be able to give you the opportunity to keep government on its toes with respect to changing technologies and things of this nature.

Mr John Jackson: That's exactly why we support this bill, one of the main reasons.

Mr Offer: I'd just like to thank you for your presentation.

Mr Tilson: Thank you, sir. I appreciate many of your comments. One line of questioning which I have been trying to obtain different opinions on is the issue of the slowing down of our economic process. I guess this is really a philosophical question I'd like to ask you. This bill gives the individual rights he's never had before, and that is good. I believe that, and I think most of us believe

that. But the question I have is, can that be abused? How far should the rights of the individual go, for example, competitors of companies, individual competitors, not necessarily for environmental purposes? That's the risk of giving rights to the individual who may not have any direct relationship to a particular development or a particular project. Could you comment on that.

Mr John Jackson: Certainly. The bill is very clear in terms of the discretion that's given to the minister or say to the Environmental Appeal Board whether to accept an appeal or not. It isn't automatic, when someone makes an application to have something reviewed, that it will happen; there is this discretionary process first. The criteria that are outlined are that you are a neighbour or have been involved in it before; that you have to have a valid reason for being involved.

I think that discretionary process has time lines which will make that happen very quickly—in some cases it's 15 days, in some cases I think it's 30 days—so that can be very quickly pushed aside. Indeed, some people would say there are too many discretions in the bill. Certainly it's not a wide-open thing where anyone can come in and make an appeal, or at least succeed in carrying through an appeal, without having shown very valid reasons for their involvement.

Mr Tilson: In many of the suggestions you have made, you have been critical of some of the hearing processes. One of the other fears of this bill is that it's going to create another line of bureaucracy, and at this particular point in time of this government or any other government, the taxpayers simply can't afford it. That may be a valid argument or it may not be a valid argument. The question is, are there other ways of solving the problems? For example, in some of the examples you've given, the way to solve some of those problems should be amending specific pieces of legislation. Could you comment on that.

Mr John Jackson: I certainly would like to see some amendments as well. However, one can never, in legislation, work out all the details to deal with these sorts of things, to predict all the things that may come up. That's why a bill that generally deals with all of them is really important.

In terms of the issue of expenditure of money, bureaucracy etc, we have to look not simply in terms of what's spent today but what will be spent a year from now or two years from now. The experience we have over and over again is that citizen involvement in this sort of decision-making means that we make better decisions today which save us from expenditures for cleanup, for example, in the future that are much, much more costly.

A prime example of where the provincial government is having to sink incredible amounts of money now is the PCB cleanup of Smithville. That happened without the public having access to information, without the data being out in terms of what was really going on at that site. It was a prime example of a situation in which, because the citizens didn't know what was happening, we're now spending millions and millions of dollars we could have avoided.

Mr Tilson: I appreciate that, and that is a good

response, except that the genuine fear is that the minister has said, "Let's deal directly with the commissioner's office," aside from the need to perhaps increase the number of civil servants or whoever is going to assist specific ministries. To satisfy many of these very legitimate complaints, it will require more people to do more things.

My honest concern about the commissioner's office, for example, is that the minister has said, "Well, it'll only require 15 people," I think is the number. I don't believe that. If the commissioner's office is going to do the effective job that it should—the previous speaker talked about the need for education and participating in perhaps the development of the regulations, and there may be other things—all this is going to require a whole pile of people. That is another issue of cost to develop a process: another bureaucracy; in other words, a bureaucracy on top of another bureaucracy. Could you comment on that.

Mr John Jackson: I think a comparison that's fair to make is with the Provincial Auditor. I'm sure none of us would want to drop that office. I don't know how many people they have in their office, but it's valuable. That report that comes out every year from the Provincial Auditor is something that helps all of you keep the government on its toes. I think we need the same thing in terms of the environmental perspective.

We're all saying that the environment and the economy are directly linked, that we need to really take care of this. I think we have to make that investment, whatever it may be. I'll trust you people and whoever to push to make sure it's streamlined and done in the best way possible, but I certainly don't want to see the office dropped.

The Acting Chair: Thank you for your presentation. Your time has run out. We appreciate it.

RURAL ACTION ON GARBAGE AND THE ENVIRONMENT

The Acting Chair: The next presentation is by Rural Action on Garbage and the Environment. Please introduce yourself, your name and position, and proceed with your presentation.

Ms Rhonda Hustler: I'm Rhonda Hustler. I live in Lambton county near Sarnia, Ontario. My presentation here today is part of a larger network of citizens' groups from across Ontario. Our group is called Rural Action on Garbage and the Environment. We were formed about four years ago to focus on waste management issues in rural Ontario.

I welcome the opportunity to speak with you this morning as a citizen activist and as someone living in a small town in rural Ontario. I'm an active member of grass-roots environmental organizations in Ontario and I believe strongly that the Environmental Bill of Rights is vitally important to us and to our work as citizens in Ontario. I support it as a tool for the protection of rights of citizens and the rights of the environment.

For the past few years, I have worked with grass-roots organizations across Ontario on a number of waste management issues, principally disposal, landfill and incineration. My own local issues in Lambton county

have focused on waste transport and export, hazardous waste incineration and waste management master planning. I've been involved in all of these issues, been involved extensively with public participation and public consultation. I think part of the outstanding value of the Environmental Bill of Rights is the right of citizens to participate in the decision-making process.

My experience as a community activist has taught me the value of public participation and citizen involvement in government decisions at all levels and working together on policy decisions and strategies. It's my view that Bill 26 will provide a procedural right for the citizens' process, mainly because it regards citizens as legitimate participants in the process.

While Bill 26 may not in all aspects fulfil our expectations, it does, without question, provide clear direction for the role of the public and a common denominator for all ministries included under the bill. We're hopeful that it will work towards balancing the public's interests with the legal and administrative processes within government and the judicial system.

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My primary interest today is how we as citizens will use the bill, the question of access, and how we will use it as one means among others to ensure that government recognizes and respects our efforts. We hope the bill will work to serve the public interest, not simply the interests of special interest groups, and we see a number of mechanisms in the bill which will serve to work in this direction.

We believe the bill is a valuable tool in conjunction with other environmental measures. As you know, grass-roots organizations have few financial resources and struggle to survive financially. Those financial problems often escalate whenever the group enters, willingly or unwillingly, into a government environmental process. As John was just explaining to you, the complicated hearing process is very often an unwelcome process for citizens because it's lengthy, expensive and exhausting. The process, in terms of rights, is very important for us, but in other terms it can be very exhausting.

To make the Environmental Bill of Rights accessible, both in theory and practice, citizens need to work with government and consider a way to fund groups using the bill in a variety of ways. In our view, part of the accessibility of the bill depends almost entirely on the availability of a funding mechanism. Of course, the issue of funding raises very legitimate questions about costs: Who pays and how much, what would be the criteria, and can and should the government really afford to cover citizens' costs involved with this bill?

From my experience, we already have some methods, some models, whereby citizens can afford financially to enter into various processes. They act responsibly and, in very broad terms, benefit the public interest. A study on funding will be submitted to you shortly by another Ontario network group, the Ontario Environment Network. That study will outline various approaches. I hope you'll have an opportunity to look at that closely.

One suggestion I would like to make in particular

today is that, from my experience, my own local group has used the Information and Privacy Commission as part of our efforts for environmental action. The commission was, for us, a useful mechanism, a mechanism that allows us to recover costs. I would suggest that this process be considered as a model for one aspect of funding.

The process works this way: In order to work on our local issue, we needed a considerable amount of documentation from the Ministry of Environment, and of course that documentation required considerable staff time, photocopying and research time—real dollars for the ministry. When we applied for the information under the freedom of information act, we were sent an invoice of what that documentation would cost the government, essentially, public dollars. We were able and willing to cover those costs. It was in the neighbourhood of around \$500. Over the years, we've used freedom of information several times and paid our costs ourselves.

If, however, we were a group that had been financially hard pressed, we could have asked the Ministry of Environment to waive those costs. We could have appealed the ministry's decision to the Information and Privacy Commission and then had a decision made at that level. If the commission had considered us needy of funds and unable to pay for the right of the documentation, we would have had our costs reimbursed. In my view, the process worked and it was fair. I suggest that this mechanism might be considered.

A funding system could reflect the current structure of freedom of information and the Information and Privacy Commission. An advisory board, for example, of multi-stakeholders in the commissioner's office could oversee the funding process and develop a funding criteria in order that the system not be abused and that it be fair. Levels of funding could be developed depending upon the kind of information or action requested by the group.

Citizen groups, from my experience, do not want to enter into complicated processes or litigation. We work very hard to work through conciliation, negotiation and the public consultation process to resolve problems long before we enter into an environmental process. We would much rather work on the issue itself than enter into appeals and reviews and government measures. For this reason, I think you can be assured that grass-roots organizations will be very discerning and very discretionary about their use of the bill. In my view, a carefully designed funding provision is essential to making the bill truly accessible to citizens.

Citizens would be expected to cover a percentage of the initial costs, and that percentage would be set by the advisory board in light of the citizens' financial resources and the kind of action requested. After the action was completed, citizens could ask to have all or a portion of their costs recovered, and the commissioner's office would then decide whether or not their action had served the public interest and whether costs should be recovered.

We recommend as well that the commissioner review the impact, be it positive or negative, of a funding system. This review could be conducted each year to analyse the impacts of a funding system for citizen groups.

This overview is only a suggestion of a possible mechanism, but we ask that you consider seriously the funding issue as equally important as the entire issue of accessibility. The critical issue is to make the bill accessible and useful and practical to citizens. In closing, we strongly support the bill and believe that the time has come for an Environmental Bill of Rights in Ontario.

Mr Offer: Thank you for your presentation. When you started, you said you viewed the bill as setting a common denominator for all ministries. I think that's something like the phrase you used. I'm wondering if you could explain how you view this bill as setting a common denominator.

Ms Hustler: In the sense that there will be a standard expected, that there will be an expectation that there's going to be an environmental value shared by various ministries.

Mr Offer: Then is it your expectation under the bill that the statement of values for all the 14 prescribed ministries will be by and large the same?

Ms Hustler: I can't answer that specifically, but there's a sense that there will be an accounting, a recognition of those common values throughout the ministries.

Mr Offer: I've been grappling with this for a while. I'm trying to find out what is the expectation of the Environmental Bill of Rights in the minds of the general public. You come with a great deal of experience at the community level. Is it your expectation that when those statements of values are finally publicized they will elevate environmental concerns as a priority in each of the prescribed ministries?

Ms Hustler: Speaking for myself on this, the expectation is that environmental consciousness and standards will be recognized as equal to other factors, so that it's going to have sure footing within each ministry and be recognized as valuable and one of the imperatives.

Mr Tilson: Much of your address has been expressed to many of us privately and even at this committee. You've emphasized accessibility to proceedings, that one of the reasons the individual may not be able to access hearings or processes is the subject of cost. One of the speakers this morning talked about the subject of fees. You and others have talked about the issue of having to hire people, I suppose, and just the general cost.

These are very complicated issues, the whole issue of environment, chemicals, understanding things. To the average person, certainly to me—I hope I'm one of the average people—it's very complicated to understand unless you do this stuff all the time.

So the whole issue of cost is important and accessibility is important. At the same time, all governments, whether municipal or provincial, are discovering that they too are having many financial difficulties in performing the obligations they're required to do to the taxpayer. Is this going to put an unbearable burden on a municipal government or on a provincial government that are doing all kinds of things that may affect our environment and may need to be monitored more and more?

We're talking about money. You're talking about money for the individual, your group or any other group.

But is the whole set of expectations—Mr Offer was using that word—a false set of expectations? We're hoping we're going to be able to stop pollution, to stop the destroying of our environment by individuals having access to certain things, but do you think it's possible because of the economic situation we're in?

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Ms Hustler: To speak first of all to the expectation, I think citizen groups are abundantly realistic about the expectations of any piece of legislation, that each one will have its strengths and its weaknesses. We find in each case that we can use one piece of legislation in a certain way, and realistically we look at this in the same regard.

As earlier speakers have said, this is seen as the very last measure, that a group would not start working on an issue through the Environmental Bill of Rights. Groups look at this bill as the last expression, really, of individual and public rights.

In terms of cost, I agree entirely that there are some hard economic realities. Our group does an enormous amount of our own fund-raising and our own responsible management of money. But there are many groups, including ours at some point if the issues drag on long enough, that will become hard-pressed financially. But you can expect citizens to be frugal far beyond anything that government might be familiar with. Groups work on shoestrings; they don't expect huge amounts of dollars, and work very efficiently and ask for minimum funding. It's not going to be exorbitant or abusive in its cost.

I also think there might be a distinction between a private proponent in the same way we have intervenor funding, that kind of a plan, where it will depend largely on who's generated the issue.

Mrs Irene Mathyssen (Middlesex): Thank you for your presentation. This morning we heard from Laidlaw, and one of the concerns expressed by Laidlaw was that this bill shifts power from government agencies to individuals and that there was a danger that individuals or groups might impede businesses to the point where they couldn't do business as effectively; they were concerned about the costs of that. As someone who has been a member of an environmental group for quite some time, do you share that concern? Do you fear perhaps there could be that kind of problem created?

Ms Hustler: My own experience with private waste management companies has been that more often citizens feel they have far fewer rights than companies, certainly far fewer resources. My sense would be that in fact there would be a clearer balancing of strengths between the two groups.

Citizens don't like a prolonged process. They like resolution and a sense of fair play and equity. So it would seem to me that the more public participation we have, the better the decision-making process, the better a corporation can behave within a community and the better goodwill we have with companies.

Mr Wiseman: My question is along the same lines. In my previous life as a battler of Metro's waste management policies, it was abundantly clear to us in our group

that the reason we were as angry as we were was because we didn't have information, we didn't have access. We felt that the people who were doing this were doing it to us, and they were not accountable because of all of these things. Where we did have access to the process and information and so on, we were much more likely to work together than we were to have a confrontational mode. Do you see this bill contributing to this kind of more open, collaborative, mutual exchange of ideas, as opposed to creating a confrontational situation?

Ms Hustler: I would agree entirely that when citizens know there's a mechanism and a system available to them for information, for an understanding of issues and a sense of freedom and their own rights, then there's far less hostility and far less fear of the issue. This can only be constructive in terms of relationships between the public and any kind of sector.

The Acting Chair: Thank you for your presentation and your responses.

FRIENDS OF THE EARTH, CANADA

The Acting Chair: The next presentation will be by Friends of the Earth, Canada.

Mr Jeremy Byatt: Thanks very much for giving me the opportunity to come and talk to you today. We don't often do a lot of work here at Queen's Park, being based in Ottawa and being a national organization. My name is Jeremy Byatt. I'm the policy director at Friends of the Earth, Canada. We're very glad to come and talk about the Environmental Bill of Rights in Ontario, because we do think this is an issue of importance not just in Ontario but nationally and internationally as well.

Friends of the Earth is the world's largest environmental network. It was founded in 1971 in the United States and has now spread to 51 countries with over one and a half million members around the world, and the international secretariat is based in Amsterdam. Friends of the Earth, Canada was founded in 1978 and has been very active since. Our key issues are climate change and energy.

Ozone depletion: We've done quite a bit of work with the Ontario government on ozone-depleting substance regulations in the last year and a half to two years. We have an urban forestry program called Global Relief. We are developing a sustainable agriculture campaign, and we work on selected economic issues.

Internationally, most of our work is on ozone depletion. Nationally, ozone depletion and climate change is where we do significant amounts of our work. Our mission is to be a national voice for the environment working with others for the renewal of our communities and the earth through research, education and advocacy.

I'm mentioning our mission statement for a couple of reasons. The key point is that in all of our work we usually work with other groups from all sectors of society, industry, government, other non-governmental organizations, the education system and professional associations, and in all aspects of our work we have research, education and advocacy components. We're not just an advocacy group. As a matter of fact, the largest proportion of our staff time and budget is spent on public

information programs. For example, of the information you see in the press on ozone depletion, we probably do background for about 80% of it across the country. That is a lot of what we do at Friends of the Earth.

We're extremely interested in the Environmental Bill of Rights as quite a forward-looking step. Being from Ontario and being the token Torontonian in our office—we've got a lot of Albertans and people from Quebec, and there's a lot of regional rivalry—I'm quite happy to see it is Ontario that's leading on this issue.

We support the bill. We think it's a very good effort, and one of the things we're most interested in is seeing the emerging consensus that's coming with government, industry and non-governmental sectors. We certainly call for full implementation of the bill.

The key aspects of it are the recognition of the need for citizen participation, both as citizens with respect to government and as citizen employees within industry as well.

We also very much like the implicit acknowledgement of the doctrine of public trust, that we have a responsibility to future generations. For the Ontario government to lead on making this key step in sustainable development is really quite impressive. We talk a lot about deficits and the public debt as being a problem for the next generation. Well, we are running up even larger environmental debts, and by having implicit acknowledgement of the idea of public trust, that we have a responsibility to the next generation and generations coming up, I think is a key legislative step and quite impressive.

The main points we're concerned about: The first one is the harmonization question. As a national and international organization we see continually the problems of federal-provincial harmonization, international harmonization, and we would really hope that implementation of the Ontario government's initiatives would not stop with there, that we'd take this to the Canadian Council of Ministers of the Environment and the federal government.

We'd like to see harmonization with the proposed ideas that the Liberal government is talking about, with some sort of environmental auditor general so there could be coherent coverage of provincial regulations by the provincial bill with no overlap and clear coordination with a federal environmental auditor general. This is really important. I don't know if you've had comments from the private sector about this, but one of their biggest environmental concerns is the issue of harmonization.

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Also, through the CCME, we really hope Ontario would strongly recommend that other provinces bring in very similar forms of legislation. Many of our companies deal in more than one province, and having to learn different sets of ground rules is their challenge. Semifacetiously, I've heard quite a few people say that one of the biggest environmental challenges we have in Canada is our Constitution. As a national voice for the environment, we thought this was a key point we should raise with Queen's Park that hopefully we'll take this outside the boundaries of Ontario.

The next point I wanted to talk about was the issue of

public and employee access. This, to us, is the key aspect of the Environmental Bill of Rights: giving citizens better access to government regulations and development of government regulations and giving employees more responsibility within their companies for environmental management.

In the private sector, we actually have done some work with various management consulting companies on a national level that are doing environmental management strategies for their corporations. This is starting to become an issue in larger companies: How do you change your corporate culture and have individual employees responsible for environmental management within companies?

With the introduction of lean production techniques loosely based on the Japanese model in the auto industry, the auto industry has already delegated tremendous amounts of responsibility to individuals on the shop floor. In the leading production facilities across the country, you will see that any single employee can stop the whole process if he sees a problem. The most successful and internationally competitive companies in our country have this tremendous delegation down to the lowest levels and also very flat decision-making structures. There are quite a few specific examples that many of you are well aware of.

When it comes to changing the environmental culture within a company, the single most important aspect in eliminating waste and pollution across a company has been involvement of employees right down to the bottom. I don't know if you've had anybody testifying from the chemical industry, but there certainly have been a lot of changes through the "responsible care" program across North America to reduce toxic waste. Company after company has stated that the key point for success was to have individual employees to care and to identify these areas of waste.

What the Environmental Bill of Rights does is that the companies on the leading edge will probably not be in the slightest bit worried about whistle-blower laws, because they probably already have them within their own companies. But this is a really good case of the government, by putting this in statute, *va encourager les autres*, to make sure that the companies that aren't doing that are moving that way.

Many of the companies that have advanced waste management strategies across the company are also finding it's extremely profitable. Northern Telecom, when it phased out use of CFCs for cleaning circuit boards, saved \$4 million in the first year; that's why they did it. Some of our more traditional structures might find it's a shock in the first place to be affected by a whistle-blower law, but it could actually increase the competitiveness of the Ontario economy. I don't know if anybody's made that point. There's a very clear correlation between very clean companies and very profitable companies. It's an extension of the whole concept of lean production, as efficient a use of resources as possible. I think this will be a good push to those companies that aren't moving that way.

Some of us in our society think that environmental

protection is a cost. If it's an end-of-pipeline add-on, it is a cost of business, but if it's built into the production process, then it can lead to greater efficiencies. A key aspect of that is the buy-in of individual workers, and the empowerment that the Ontario government's proposing with whistle-blower legislation is going to be a real boost to that. I hope that argument's made much more publicly in Ontario; I haven't seen that argument made more publicly, that this is not a burden but an opportunity. In Mandarin script, the symbol for danger and for opportunity is the same symbol. I think that's a key point that has to be made that we should bring into our culture here.

Within the Ontario government, I think the same thing goes. Opening up the environmental regulatory system, across ministries, to the public will certainly make regulation a lot easier. It's incredibly expensive to enforce regulation, and regulation is in all of our best interests to prevent environmental degradation, and that's implicit in the public trust doctrine. So why not get all the citizens of Ontario involved in assisting the regulatory process? It sounds to me like a pretty cheap way to do it, and a lot of people care. We've had Participation for physical fitness, and that's probably going to be extended to some kind of environmental Participation with the new federal government.

I remember as a school boy in Toronto learning about litter and picking up litter. One of the reasons Toronto's such a clean city is not because—well, there are big programs to clean up the streets, but also it's been included in the educational process that it's a citizen's responsibility. I think here we have to look for opportunity, and with the Environmental Bill of Rights we're opening up more opportunities.

How am I doing for time?

The Acting Chair: Fine. We'd like you to leave some time for questions, if you would.

Mr Byatt: Certainly. I can discuss the issue of intervenor funding. As a question, I don't know if that's already been clearly dealt with.

Just to sum up, the Environmental Bill of Rights is actually a piece of sustainable development legislation, which is unfortunately all too rare across the western world, but it is increasingly coming in because it's acknowledging the concept of public trust and the rights of future generations and it's bringing all of us, as employers, as citizens, into the process.

It's a very good first step. I don't think it's going to be any surprise for people at the forefront of change in any sector of society. It certainly might be a bit of a shock for people who are at the trailing edge. I don't think any of us should be frightened by bringing in this kind of legislation. I think we should instead be excited.

From what I've heard from other participants about the consensus-building process that's involved, that's a really important step, because this sort of legislation discussion shouldn't be a battleground for competing special and political interests. It should be an opportunity for us to all learn from each other and work together and move ahead.

For us at Friends of the Earth it's important to work together and to work with others for the renewal of our

communities and the earth. That's what we see at the Ontario government's trying to do with the Environmental Bill of Rights.

The Acting Chair: Thank you for your presentation. Questions?

Mr David Johnson: You mentioned intervenor funding but you didn't really have an opportunity to get into it. The previous deputant mentioned intervenor funding as well and felt that there should be money available for community groups to be able to pursue—I'm thinking of Ontario Hydro projects, and we see that through the environmental process there's a great deal of money involved with intervenor funding, large sums, millions of dollars involved, and I guess some people wonder if that's being wisely spent.

I'd be interested in your comments on it and how it's controlled, from your experience as a broad-based spokesman for the environmental groups. What sort of fund would you set up through the Environmental Bill of Rights? The Treasurer has to set a budget.

Mr Byatt: Exactly. This is really tough. My immediate gut reaction is that we're broke; as much money as possible would be greatly appreciated. We're a national organization and we don't have a travel budget. The reason I'm here in Toronto is because somebody's paying me to give a speech tomorrow afternoon. That's why I'm here today, or else we wouldn't have been able to come.

In the Ontario context, one of the advantages of intervenor funding, especially travel money, is that it allows groups outside of Toronto to speak. Toronto-based groups have an inordinate influence on the political process, just as Ottawa-based groups have an inordinate influence on the federal process. That's very much an Ontario issue.

The question of intervenor funding is quite difficult. I think we all recognize the constraints on public finances. I pay taxes too, and I certainly don't enjoy so much of my tax money going to pay interest on federal and provincial and local debt. We're very aware of that.

There's also an ideological question of independence: Should groups accept money from the government to go and lobby the government? The question of independence is something we discussed within Friends of the Earth, international and national, and there are strong arguments made that one shouldn't accept intervenor funding because you can lose some of your objectivity.

The argument in favour of establishing intervenor funding is balancing the economic strength of various lobbies. If you're representing a private company, you're going to have a travel budget and you're getting a salary for that day, so the argument made in favour of intervenor funding is to give more voices access.

1140

There's also a particular problem in Canada about funding non-profit organizations, and that's some of the aspects of the tax structure with respect to foundations and charitable donations. In the United States there's much less intervenor funding available, but the amount of foundation money that's available to non-profits is roughly 100 to 200 times more, not 10 times, as you'd

expect. The economy's 10 times bigger, but there are two orders of magnitude more money available. That's the difference in the tax code. The same with donations to charitable organizations: You can really get only about a 50% write-off, so it's more difficult for non-profit organizations to raise money. As a result, there's been a history of going to back to the public sector to get intervenor funding.

Also with intervenor funding, you need travel money and then research time. I would think that in this case the key thing to do is to make data available. Research time is really difficult to fund and it's very difficult to get information. Subscribing to journals is expensive. If this information is made available electronically, free of charge, using the interface, that in essence is a form of intervenor funding because with us, when we budget our time, research time's really important. If you could do that, that would be a very cost-effective way to do it.

It's unfortunate, but given the current structure of charitable donations in Canada, I think there has to be money available for travel for groups outside of Toronto. Maybe there's got to be some kind of radius rule for people from small towns, even for people from small towns in eastern Ontario, like Ottawa. We need to be able to come down here. For us to come and speak here, it costs a week's salary for one of our researchers. That's the reality of the situation if you want to come down here, especially if it's on short notice and you can't plan well ahead. Really that's what we're looking at, if you want to pay the full travel costs.

Mrs Mathysen: I appreciated your presentation and I was intrigued about what you had to say about the cost of doing business and the reduction in the cost of doing business by good environmental management. Given the accepted reality of the 1990s, can our economy survive unless we do this kind of thing, unless we do have environmental bills of rights across this nation?

Mr Byatt: If you take a look at two countries which have quite democratic structures in their industry, which would be Japan and Germany, Japan's already tied up 80% of the US market for air quality control equipment and BMW and Mercedes Benz are already designing their cars from scratch for disassembly and recycling. It's the only way to go. We'll get crushed by our trading partners if we're not moving that way for the most efficient use of resources possible.

Mrs Mathysen: So only the dinosaurs will complain.

Mr Byatt: Yes.

Mr Offer: Thank you for your presentation. Because of the organization being not only national but international, there are, I understand, some other jurisdictions that have, if not the same type of legislation, the same direction this legislation wishes to accomplish. I'm wondering if you might, in the short time available to us, share with us some of your experience with legislation of this kind in other jurisdictions.

Mr Byatt: Unfortunately, I haven't done any research on that question myself. Susan Tanner, our executive director, who was unfortunately unable to come today, would have been able to talk to that point very well. As

a matter of fact, she's just come back from the international annual general meeting in Djakarta, and she is an environmental lawyer. My background is economics and engineering, and I haven't done any work on that, which is too bad. But that might be an interesting point to do some study on. That could very much help a communications program once this bill is enacted and you have to go out and sell it to the rest of the province. That could be very useful to put into the public communications strategy.

Mr Offer: If Ms Tanner could put down something in writing on that, I think it would be quite helpful to the committee.

The Acting Chair: Thank you for your responses and your presentation.

Mr Byatt: It's a great pleasure and it's nice to come down to Toronto for a couple of days. I must admit I'm glad I get to go back outside, because it's awfully hot and stuffy in this room. You've got my sympathies.

The Acting Chair: I noticed that, yes. Sometimes it's worse.

CANADIAN ENVIRONMENTAL DEFENCE FUND

The Acting Chair: The next presentation is by the Canadian Environmental Defence Fund.

Mr David Donnelly: I hope this water comes from the lake and not from some bottle.

The Acting Chair: It's excellent water.

Mr Tilson: Lots of chlorine.

Mr Donnelly: Thank you for inviting me here today. My name is David Donnelly. I'm the executive director with the Canadian Environmental Defence Fund located in Toronto. I've been the executive director for five and a half years now.

The founding principle of the fund was to ensure that no citizen be denied environmental justice on the basis of cost alone. In fact, our *raison d'être* is to provide people with the type of funding that you've heard, from people who have already presented today, is required. In fact, we started with a novel case where a citizens' group went to court and was successful. They were given a cost award and took that money, \$5,000, put it in a bank and said, "Next time a public-minded citizen group comes along and pursues a precedent-setting environmental law case, we'll give them the money and see how they do." That's how the fund was started.

Since 1985, when we incorporated, we've provided over \$1 million to citizens' groups across Canada pursuing nationally significant or precedent-setting environmental law cases. We've also provided legal counsel, planners and scientific expertise to these groups as part of our legal and expert assistance program.

This funding is only available to citizens who are involved in extraordinary cases where there are extraordinary circumstances, where a nationally significant public resource is to be compromised by a government decision or an action by industry. I want you to frame that phrase in your mind for my presentation today: "extraordinary circumstances."

These are the groups like the Newfoundland Inshore

Fisheries Association, which tried in 1990, unsuccessfully, to have a moratorium placed on the cod fishing, and at that point tried to have an environmental assessment on dragger technology and trawling on the spawning grounds imposed. They were unsuccessful, and then two and a half years later they had to rue the consequences of that government decision. It's groups like the Innu nation in Labrador, who for five years have been fighting low-level flight training which has had a devastating impact on their communities, all of which you may be familiar with if you had occasion to see the plight of the children in Davis Inlet last year. It's Martha Kostuch and the Friends of the Oldman River, who are fighting now to preserve Canadians' right to a private prosecution in federal court. It's groups like the Temagami Wilderness Society and others.

In my presentation today, I'd like to address three topics in ascending importance. The first is to give our general support for the bill; the second is to talk about our recommendations for improvement; and third, I'd like to spend the majority of my time on recommendations for funding, as we think we have the answers to these questions about where you can get the money, how it's to be disbursed and who is to administer the fund. We have the answers here.

I should add that I will be making a written submission to the committee. I just have notes I'm referring to today, but I will make a submission in the next couple of days which you can refer to during your deliberations about improvement of the bill.

First, our general support for the bill: The CEDF supports the concept of an Environmental Bill of Rights for Ontario. It is our respectful submission that Bill 26, An Act respecting Environmental Rights in Ontario, is a significant step in the movement to establish an Environmental Bill of Rights for Ontario. As such, the CEDF supports swift passage of Bill 26 into law.

The bill creates many new opportunities for the public to defend public resources like air, water and soil. Important tools for increasing public access to environmental decision-making have been created in this bill, such as the registry, the commissioner's office, and enhanced public notice of government decision-making. Incremental improvement in citizen access to courts is a further necessary and long-overdue improvement in our province's environmental protection regime.

Despite these important and even historic gains, implementation of these provisions will determine the success or failure of this important public policy exercise. Too much time and public money have been invested in this exercise to have the bill fail through neglect or indifference. Every elected official and their constituents must now scrutinize the all-important implementation of the bill.

Now to our recommendations.

First, we think that one of the unfortunate omissions in the bill is the fundamental right to a healthy environment. We believe that should be included in the purpose of the act and not in the preamble. This was promised in Bills 12, 13, 23 and others. It is the cornerstone of the movement to establish an Environmental Bill of Rights. It is a

fundamental and immutable right which may not be provided now but will be provided some day in this province, and we look forward to participating in that movement.

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There's a saying in the Bible, "These, having not the law, are a law unto themselves," which is Romans 2:14. When I dwell on this aspect of providing this right to a healthy environment, I'd like you to think of that, because the bill only allows the public to enforce the existing law. Tribunals certainly serve their purpose in Canada. In fact, in Ontario we do a particularly good job of administering tribunals, and it does provide the public with good access to decision-making.

But enforcing the law is not enough. What about the extraordinary circumstances? If James Bay II is ever built, it will be legal. The decimation of the northern cod stock, a wholly man-made tragedy, was done legally. Low-level flight training, which has caused so much suffering, is presently legal. The logging of Clayoquot Sound is permitted by law.

What about Ontario? I have a personal experience, and that is my experience with Long Point, Ontario, which is one of Canada's two most important ecological reserves. It contains 671 species of vascular plant. It contains rare and endangered species of fish. It is a class 1 wetlands in the province. It is designated as internationally significant by the Ramsar Convention on Wetlands. It is a UNESCO biosphere reserve. Yet somehow a trailer park, a marina, a hotel and condominiums have all been located in and adjacent to those wetlands. I was personally involved in the struggle to stop that. Some of what was done was legal. All of it was supported by the MNR. The minister would not intervene, and the local MPP wrote a letter to my employer intimidating me and questioning my integrity in involving myself in this issue.

This is what happens to citizens in the province who don't have this fundamental right to question these types of decisions in the courts. Tribunals are simply not enough. Where the law is wrong or does not exist, we need the enforceable right to a healthy environment.

The experience in Michigan with the Michigan Environmental Protection Act tells us that there will not be a flood of cases. There has been less than one every two months now in the year since it was passed. One case was even brought against the automobile in Michigan with this right to a healthy environment, and the person was thrown out of court on their ear.

I'll make this part of my written submission, but I want you to know that this right to a healthy environment is expected by many people, including the Canadian Environmental Defence Fund, and I will make reference to that in my submission.

We have other recommendations as well for improvements. First, we'd like to see the standing provision in public nuisance suits liberalized. We think the remedies provided in the civil cause of action should include damages. We have trouble with the new defence. Also, the test for the leave to appeal class I and II permits to the Environmental Appeal Board is too onerous and we

feel it should be liberalized. That would be clauses 41(a) and (b) of the bill.

Now to the part on which I believe I speak with most expertise, and that is on the issue of funding.

Many of the bill's provisions create new rights and opportunities to protect significant natural resources. Most provisions require groups to retain experts. In cases where the public interest is being defended, these groups will require supplemental funding. The question is, who is going to provide it?

Certainly the groups will do their own part. They will hold their bake sales, they will hold their raffles. This is what we call bake sale justice, and it works, to an extent. There are some agencies and groups, like the Canadian Environmental Defence Fund, that support those groups, and we ask people from across Canada to involve themselves in local issues to defend provincially and nationally significant resources, and that has some effect as well. But there must be an equal partnership, and I am here to tell you today that government has admitted that it has a role to play in the funding of these groups.

The CEDF undertook a review of the Intervenor Funding Project Act, and what we found is that "Communities and interest groups have indicated that they have been able to mount a credible and complete case with funding support and that without funding they would have lost their personal resources or they would not have participated at all." The study concluded, "Without funding for intervenors, access to important decision-making affecting public resources is effectively denied."

In the report of the Sewell Commission on Planning and Development Reform in Ontario, there is a recommendation that government funding be provided to principled public interest intervenors. The Task Force on the Ontario Environmental Bill of Rights reviewed the issue of funding, and in fact in a submission made by a number of environmental groups, they stated unequivocally that, "Funding under the Environmental Bill of Rights is a right that is as essential as any provision contained in the bill." I'll make reference to this in my written submission.

Finally, the need for funding unselfish, civic-minded citizens has been witnessed by the CEDF for over eight years. Having funded the Innu nation in its struggle against low-level flight testing, inshore fishermen and outport communities in Newfoundland trying to save the cod stocks, retired people in Port Rowan, Ontario, attempting to stop condominium projects from being located in internationally significant wetlands and Martha Kostuch fighting for the principle of fair environmental assessment and the right of prosecution, the experience of the CEDF should clearly make out the need for supplemental funding of future cases such as these.

Now, where to find the money? Certainly in our discussions in the private sector we have had interest in funding an Environmental Bill of Rights fund. Law firms are willing to participate, in my view. Certain corporations and foundations will be willing to participate and the law foundation under the law society should also have a role to play, as it did in the creation of the class proceedings fund.

Certainly the CEDF will go to its members. We will also attempt to fund-raise. We have been doing this for eight years. It takes a lot of hard work, but we're prepared to do it and we're prepared to contribute our share.

But at the end of the day, the government also has a role to play. You have a share that you have to put up. If you would like us to come in and find the money in the budget, we'll do so if necessary, but the amount we're talking about is only \$50,000, \$100,000—seed money to start the fund. That's all we're looking for, and it would be an equal share.

The real issue is how to sustain the fund, because the government doesn't want to pay out in perpetuity for this fund and we respect that. But there are provisions right within this very bill for sustaining a fund that could be given to citizens' groups involved in these extraordinary circumstances. I'll talk in a moment about criteria for eligibility for funding, but again these would be extraordinary cases, not every citizen using the Environmental Bill of Rights, probably less than 10%, probably 1% of the people using the bill.

Subsection 95(8) of the bill states, "A restoration plan may provide for money to be paid by the defendant only if the money is to be paid to the Minister of Finance," then there's (b), but (c) "the Attorney General and the defendant consent to the provision." Even if it isn't within the bill, why not create even just a government directive that it is a possibility that defendants, should they so choose, could pay money into the fund so that future users of the Environmental Bill of Rights could be funded in their principled public interest acts.

We've been told by lawyers in the private sector that they would be happy to have penalties paid by their clients paid into something useful and constructive as opposed to just back to the Minister of Finance.

It is our recommendation to the Attorney General to direct that any monetary awards arranged under section 95 be directed to the fund, particularly where the plaintiff benefited from the use of the fund in initiating the proceeding.

Section 100 gives the court discretion to award costs in a case under section 84 of the act and may consider whether the action is a test case or raises a novel point of law. The judiciary could be informed of the existence of the EBR fund and of the social benefit of directing costs awards to the fund where appropriate. This occurs now in private prosecutions; this occurs now where judges direct funds to public interest or to public benefit causes.

Finally, section 74 also provides an opportunity to replenish the fund. It can be anticipated that a number of investigations initiated by private citizens may eventually be taken over by the MOEE. Fines resulting from these convictions, owing their initiation to the provisions contained in the EBR, should be ordered to be directed to the EBR fund.

It is our respectful submission that with minor changes to the Environmental Bill of Rights, and with a few directives from the Attorney General and from the government, this supplemental funding could be achieved through the bill. The fund could be self-sustaining, and

we look forward to working with this committee and working with this government, working with whoever is interested to try and create that fund.

I'll finish with just who should be eligible and the conclusion.

We receive hundreds of applications for funding every year. Every single case is a good one, and we have to make the determination about which five or six groups are going to benefit from our fund. We have criteria that states that the case that's applying must involve human health and the natural environment; it must involve a nationally significant or precedent-setting environmental law case; the public interest must outweigh the private interest. Then we have a national advisory committee that instructs us as to which groups should be eligible, which groups are so important that they could establish a precedent that will be used by future generations.

Creating such criteria would not be difficult, and we would be happy to instruct anyone interested about how that could be done. It is subjective, and yet you will find there will be cases that are so extraordinary they will cry out for funding and it'll be an easy and simple determination to give them a small bit of money, not a huge sum—\$5,000, \$10,000. They will always be the majority funders of their own cases, but by providing them with something, a small share, you encourage people to pursue those cases which are in the public interest which are so extraordinary that every citizen would admit that at least—at least—they should have access to justice. The CEDF does not take positions on issues. We try to defend that simple principle, that no one should be denied access to justice on the basis of cost alone. We say let the courts decide.

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In conclusion, I say that this bill is very good and deserves our support, but if it is to succeed, it must be properly implemented. But to be really fully and truly implemented, the concluding statement I would like to make is that the government has got to play its share in the funding of public interest citizens using the Environmental Bill of Rights. This is the conclusion of the environmental community, in my view. It is also the conclusion of the CEDF.

That ends my oral statements for today. I'd also like to remind you that I will be putting in a written submission on these points, and now I think I'm supposed to entertain questions.

The Acting Chair: Thank you for your presentation. We note your commitment to forwarding a written submission.

Mr Wiseman, our time is very short. There will be a vote called.

Mr Wiseman: Could you elaborate on what you meant by the threshold levels in section 41, which is the leave to appeal? You indicated that they were too onerous, I believe.

Mr Donnelly: The standard is simply too high. You can imagine that there would be a number of reasonable interpretations, a number of reasonable possibilities. I guess what we're looking for as environmentalists is that

the most reasonable should be the one that is abided by, so this is somewhat an artificial hurdle, a somewhat artificial threshold to get over.

Mr Wiseman: Can you give us some wording that would make this section a little better from your perspective?

Mr Donnelly: I wouldn't want to do any legal drafting on the spot, but I'd be happy to give you a submission.

Mr Wiseman: If you could do it in your written submission, I would appreciate that.

Mr Donnelly: I will do that.

Mr Offer: Thank you for your presentation. You've given us much food for thought and we're looking forward to receiving the written presentation.

It's interesting that you suggest moving the preamble into the bill. There is in other bills much discussion about that. You believe that by moving the preamble out of the preamble and into the text of the bill it changes, if not the wording, the strength of the words that now exist.

Mr Donnelly: The purpose of this bill should be explicit: to provide the right to the public for a healthy environment. That's where it belongs, in the purpose, if that's what you believe is the purpose of the bill.

Mr Offer: Quite interesting.

Mr Tilson: The major concern I perceive in letters to my office has been the overall issue of cost. You're talking about the cost of the private people responding to governments themselves. A municipality in my own constituency wrote a letter to me expressing the concern about more cost to the taxpayer because ultimately, whether you're talking funds or financial assistance, it's going to mean more taxes. Can you make some of the taxpayers feel better that it won't increase taxes substantially?

Mr Donnelly: I'd love to. We're in the process of doing a review of the federal environmental assessment process and what we're finding is that in all cases where there has been insufficient review of major undertakings that will have a significant environmental impact, there is a direct and substantial public cost.

In the case of the cod stocks, for example, it is costing us \$800 million just to pay those fishermen to stay at home and do nothing. The Rafferty-Alameda dam, which was not assessed, has been written off by the Saskatchewan government to the tune of a quarter of a billion dollars. There are direct and substantial environmental costs if these things are not properly reviewed.

If you look at siting costs, for example, the cost to provide people with adequate information, to have an adequate assessment, whether that be through the Environmental Assessment Board or just through public hearings or public meetings, is minimal compared to the overall cost of the project.

The Acting Chair: Mr Lessard, the parliamentary assistant.

Mr Lessard: I was intrigued by your comments with respect to the establishment of a fund, and I was wondering whether in your experience such a fund may encour-

age or discourage the pursuit of frivolous actions.

Mr Donnelly: The answer to that is an emphatic and categorical no. If you talk to any person who is engaged particularly in the legal process, it is a horrendous experience. It is very costly. There is the risk at any time of losing and having to pay the other side's cost, which is a very direct threat. People who go forward with these types of actions are extraordinary citizens because they take such a risk.

In this case, if you provide funding, again it would only be a minority sum of what they are required to raise on their own. Their personal commitment will be very large. The public commitment in terms of funds would be relatively small. The risk is all theirs and yet the benefit will be society's.

The Acting Chair: Thank you for your responses and your presentation. Our time has now expired, so the meeting is adjourned. Thank you for attending.

The committee recessed from 1205 to 1558.

The Vice-Chair: Could we get started, as we have a full agenda this afternoon. Welcome to the sittings of the standing committee on general government on Bill 26.

NUCLEAR AWARENESS PROJECT

The Vice-Chair: The first presenter is Mr Dave Martin from the Nuclear Awareness Project. I think you know you have 20 minutes, which is not very long. If you can leave some time at the end of your presentation for some questions from each caucus, it would be appreciated. Please go right ahead.

Mr Dave Martin: Thank you. Members of the committee should have brief comments on the Environmental Bill of Rights and also a copy of a recent Nuclear Awareness Project newsletter and our 1992 annual report.

Just by way of general background, Nuclear Awareness Project is a non-profit group. We're based in Durham region; our office is in Oshawa. We're a member of the Ontario Environment Network and we've played a leading role in the formation and operation of the Ontario environment/energy caucus of the network. Nationally, we're part of the Canadian Environmental Network as well as the Campaign for Nuclear Phaseout. We have one affiliated group, a local group based in the municipal region of Durham, called Durham Nuclear Awareness, DNA.

I think from our annual report you can get an idea of the kind of role we play in public education and research. Our newsletter, which by the way has also gone out in the mail to all members of the House, will give you some idea of our current issues of concern.

We've participated in hearings before the Ontario Environmental Assessment Board, the Ontario Energy Board and the National Energy Board. Our main focus is on nuclear issues, on nuclear power in particular, but we have a deep interest in energy conservation as well as renewable energy. I sit on the steering committee of the energy environment caucus of the OEN and I'm a member of the Council on Renewable Energy, which advises the minister.

Just generally on the act, I'd like to start by saying that Nuclear Awareness Project strongly supports the bill,

along with, I think I can say safely, the environmental movement in general. We have for years fought to be involved in public decision-making around the environment and to create some degree of transparency and public control over environmental decision-making. It's been, I think it's safe to say, a long, very hard road and a very frustrating one. I think you have to search no further to understand, therefore, why the EBR has been, in general, so warmly received.

I think you can also see the reason why there has been such a long-term flirtation with the whole concept, and not just with the present government but with other parties as well. The EBR speaks to the collective frustrations and disappointments of the environmental community as we have watched the environment be destroyed. I think the EBR is a good model. It's a not a perfect model, and that's what I want to get into right now, because I hope that the members of the committee, in government and opposition, are going to help to improve the bill as it's laid out.

I'd like to start by making a general observation. We do a lot of work at Nuclear Awareness Project, as you can well understand, with Ontario Hydro. There's been some question raised as to whether the EBR is going to apply to Ontario Hydro and, for that matter, other crown corporations. I would urge you to clarify this question. There's no question in our minds that the EBR should apply to Ontario Hydro. I wish to draw to your attention as well that in the draft regulations the Power Corporation Act has not been included. It should be.

I'd like to comment specifically on section 2, the purposes of the act. There are a number of qualifications in subsections 2(1)(a), (b) and (c), if you want to look at those. There should be an unqualified and straightforward commitment to environmental protection. We recommend the deletion in 2(1)(a) of the words "where reasonable." The definition of "reasonable," in our view, is subject to enormous dispute. Similarly, in subsections 2(1)(a), (b) and (c), the words "by the means provided in this act" should be deleted. In our view, the scope and power of the act should not be intentionally limited.

In that same vein, in subsection 2(2)1, the words "an unreasonable" should be deleted, so that subsection would read, "The prevention, reduction and elimination of the use, generation and release of pollutants that are a threat to the integrity of the environment."

Next, I'd like to address something which is of particular concern to Nuclear Awareness Project as a group concerned with energy issues. I'd like to point out that the purposes of the act, as defined in 2(2), do not include the conservation of energy.

We suggest that a new section, 2(2)6, might be created which might read, "The encouragement of energy efficiency technology, and renewable energy, as well as the efficient use of non-renewable energy resources."

Next, part II, public participation and government decision-making, some general comments.

The environmental registry: an excellent idea in principle. From our viewpoint, it supports the public's right to know in a very practical way, which I find very

appealing. My concern is that in order to make that registry accessible, there's got to be funding provided to get the information out, and I'd like to see something to that effect put into the bill. I think it's the only way the environmental community and the public interest can be defended.

The ministry's statement of environmental values: Again, I think it's a great idea and our organization, for one, is looking forward to consulting with the 14 ministries that are listed. I would, however, suggest several amendments in this section. I can assure you, having been through many, many consultations—more than I care to name—that 30 days is an insufficient period of time to allow for adequate consultation.

You as politicians have your own staff, your parties have research people, the government has its vast bureaucracy to call on, but our groups out there that are defending the public interest don't have staff, by and large. They depend on volunteer time, and the tradeoff here is time. We just need more time to deal with information and to cope with it. Our networks and caucuses need time to mail out. It's that simple. We need to mail out to our member groups, and then once the individual groups out there in the community find out about it, they need time to turn it around with their members to consult them in turn. I'm suggesting that subsection 8(4)—that's page 8, if you're interested—be amended to read, "The minister shall not finalize the ministry's statement of environmental values until at least 60 days after giving the notice under this section."

There are a number of following amendments that need to be made in line with that. Subsection 8(5) would be amended to read, "The minister shall consider allowing more than 60 days between giving the notice under this section and finalizing the statement in order to permit more informed public consultation on the statement."

I'd just like to observe that the bill expects the public to comment in 30 days, but I note that the government allows itself nine months in subsection 9(1) to make its amendments. In part IV, the application for review section, the ministries are allowed 60 days just to reach a decision on whether or not to even hold a review. So I put it to you, in all fairness, if the government needs that much time, with its resources, to make simple decisions, how can you expect environmental groups to turn it around in a shorter period of time?

My major concern with this statement of values has to do with what recourse the public will have in the event that there's a violation of the statement. The act, in my view, must be amended to provide some remedy for lack of compliance; otherwise these statements just may be turning out to be window dressing. I don't know how, but perhaps the commissioner can play a role in providing some sort of remedy for non-compliance, but I put it to you that this is a very serious question that needs to be addressed.

On proposals for policies, acts, regulations and instruments, a number of specific comments: First, a removal of qualifications in subsection 15(1); again an explicit requirement for 60-day notice for the reasons I've already mentioned. Subsection 15(1) therefore should read, "If a

proposal under consideration for a policy or act could, if implemented, have a significant effect on the environment, the minister shall give notice of the proposal to the public at least sixty days before the proposal is implemented in order to allow for amendments."

Similarly, subsection 16(1) can be amended. I've got a text in the brief.

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Subsections 15(2) and 16(2) I believe should be deleted for the simple reason that administrative and financial acts can also have significant impacts on the environment. Again, the consultation period of 60 days should be amended in subsection 17(1). Subsections 22(1) and 23(1) should be similarly amended.

With regard to the Environmental Commissioner, a general sort of recommendation that I would like to make is that the act should mandate the creation of an environmental advisory committee composed of public interest advocates to act in an advisory capacity to the commissioner, a auditor for the auditor, if you will.

Parts IV and V, application for review and application for investigation: I think there's a fundamental problem here and that is that we believe the minister in question, whoever it may be, is given too much discretion to determine whether or not a review or an investigation will take place. How to remedy that? I haven't had time to really devise a specific recommendation, but it should be balanced, I suspect, by explicitly defining the triggering mechanism that takes place, for example, if the ministerial statement of values is contravened in some fashion.

Finally, the right to sue: We believe that subsection 84(7), the little section in there where class actions are prohibited, should be deleted. I see no logical reason why that collective action should be prohibited. It's simply an efficient way of dealing with problems. We believe that subsection 85(3), dealing with the defence option, should be deleted in so far as it offers too much interpretative leeway for defendants.

With that, I'd like to end my comments and I would invite questions.

Mr Offer: Thank you for your presentation. You've raised a question that just has to be asked, through you and through the Chair back to the parliamentary assistant and ministry staff: Under the Environmental Bill of Rights, is Ontario Hydro included? In fact, are all other crown corporations going to be included under the bill?

Mr Lessard: Ontario Hydro wouldn't be included directly under the Environmental Bill of Rights at the present time. However, if the ministries are prescribed and if the minister were to make a policy statement that would affect an agency, board or commission that came under their jurisdiction, then the policy statements could be subject to review under the Environmental Bill of Rights.

Also, any agency, board or commission could be subject to a request for investigation. They're currently being investigated, so there's no change there. Also, the provisions of the act with respect to expanding the rights to sue would apply so that members of the public would

still have those expanded rights available to them.

Mr Offer: I don't know if you wish to respond, but I think you've raised a crucial point. Here we have a Ministry of Environment and Energy, under which falls one of its major crown corporations, Ontario Hydro, a schedule 2 agency, if memory serves me correctly, and that agency is not under this particular bill. From the parliamentary assistant's response, apparently neither would any other crown corporation such as the Ontario sewer and watermain corporation. It would also be exempt from the EBR. I think that might come as a surprise. I thank you for bringing this up because it is something which, in this short period of time that's been allotted to us, we're not aware of. Obviously the Power Corporation Act is also exempt.

Does this mean that the current discussions going on with respect to Ontario Hydro and what it may do in terms of restructuring would not be subject to review by individuals in this province under the Environmental Bill of Rights? I was asking that because you opened it up.

The Vice-Chair: Did you wish to comment?

Mr Dave Martin: Maybe I could make a comment, because Wayne probably answered it in part. It's certainly going to be captured under some aspects of the bill, the investigation and review and that kind of thing. I would argue that Ontario Hydro really is a special case in many ways. It's a tail that tends to wag the dog and I think needs to be addressed explicitly. I take the comments you've made.

Mr Tilson: I'd like to continue with this. I asked this question last week with respect to Bill 17, the one that's before the House now, on the various corporations that are being created for roads, water and real estate, a number of corporations. That's really going to take a large percentage of what this government is doing and hand it over to crown corporations. We might as well deal with those as well. To the parliamentary assistant, and I raised this last week, will this bill apply to those corporations as well?

Mr Lessard: Which corporations were those?

Mr Tilson: The corporations that are being created under Bill 17.

Mr Lessard: I think that would be the same answer as Ontario Hydro. They're included under agencies, boards and commissions that are directly responsible to a ministry, and the minister could make policy statements which would be subject to review. As far as the act requires ministries to provide statements of environmental values, those provisions aren't imposed on agencies, boards and commissions. They don't have to provide statements of environmental values. The reason for that is that the heads of agencies, boards and commissions aren't elected officials. They're actually appointed to those positions and they're not directly accountable to the voters.

Mr Tilson: That's the point. We're now having even more matters that have normally been under the control of the government being assigned to crown corporations, and it has become quite clear to me, with your answer at least, that this bill will not apply to them. We're clearly

having even more agencies that will deal with environmental matters that this bill won't apply to.

However, I'd like to return to your comments with respect to the statements. You've talked about—and I quite concur—what happens if they're violated? That's a legitimate question. Have you even put your mind to what happens if you don't like the statements in the first place? So a ministry makes a statement. Well, so what? Or they make amendments; another government comes along and amends them. They make a statement and you go through the various time frames, the 30 days or whatever is allowed, and it's put into the registry for a period of time. So what?

Mr Dave Martin: Personally, I'm satisfied. There is, as I'm sure you know, pretty elaborate consultation there on the statements, and the same process is required for amendments. I'm reasonably satisfied with that opportunity to help determine what the statements are going to be.

Mr Wiseman: You were talking about creating a new section to encourage energy efficiency technology in renewable energy. I'm just trying in my own mind to fit this in. Is it not possible that, through the registry and through the role of the commissioner, where there is no statement or policy, through the vehicles in the bill it would be possible to push the government into creating and directing and making those policies? I've heard that from other groups and I'm just wondering if you agree.

Mr Dave Martin: It's possible, but my point is a valid one. In section 2, where the purposes of the act are defined, it's a very notable absence that energy conservation is not explicitly included, and I can't see how it fits in any of the five items listed in 2(2). If you can show me how it is, I'd be happy to withdraw my suggestion.

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Mr Wiseman: I'm not arguing with your suggestion. Do you feel comfortable that there's a mechanism here that will be able to force the creation of regulations, the creation of statements and the creation of policies on a lot of items that are not even foreseen at this point?

Mr Dave Martin: You're probably right, but it's a symbolic thing. It's a matter of principle, and it's identifying issues of principle that we're concerned about. That's important, and I think it deserves amendment. It doesn't alter the nitty-gritty of the bill substantively, but for us it's a matter of principle, and I really hope you would amend it to include it.

The Vice-Chair: Thank you very much, Mr Martin, for your presentation. We appreciate it had to be short, but nevertheless it's important for us to know your concerns, and you've brought up some very important points that weren't previously considered.

Mr Dave Martin: Thank you.

DUCKS UNLIMITED CANADA

The Vice-Chair: AMO, as you know, has been rescheduled for next week. The next presenters, from Ducks Unlimited, are here, so if we could proceed now with them we might have a little more time at the end of the day to go to the vote in the House. Mr Wishart, I understand you are the executive director of Ducks Unlimited.

Dr Rick Wishart: My name is Dr Rick Wishart and I'm the provincial manager for Ducks Unlimited in Ontario. I'd like to thank the committee for allowing me, on behalf of Ducks Unlimited Canada, to address you about aspects of concern we have over the present Environmental Bill of Rights, Bill 26.

To give you a bit of background about who we are, Ducks Unlimited is a non-profit conservation organization which began in Canada over 55 years ago. We have sister organizations operating in the United States, Mexico, New Zealand and Australia. We're dedicated to the perpetuation of waterfowl through the protection, restoration, creation and management of habitat. This work is funded through donations of lands, funds and other resources from citizens, corporations, governments and agencies.

Enhancement of habitat is accomplished on a multi-use basis, providing not only benefits to waterfowl but also very broadly to biodiversity, the general environment and to people. The work on the ground that we do occurs at thousands of specific project sites, but this is undertaken in a manner aimed at restoring lost habitat values over broad landscapes. As well, we are committed to working in an increasing role with land owners, children and the general public to inform, educate and demonstrate to them the value and importance of conserving wetland habitat.

Historically, many of those who have donated to DU were waterfowl hunters who recognized that without wetlands and habitat there would be no waterfowl. Today, of our 140,000 members across Canada, some 38,000 members in Ontario alone, about half are not hunters, but indeed they recognize the wide environmental values of the work we collectively do.

Since our inception in Canada half a century ago, Ducks Unlimited has enhanced and protected over 17 million acres of habitat here. Since 1976, when operations began in Ontario, we have invested \$36 million in enhancing over 185,000 acres of habitat at 700 project locations in Ontario.

We deliver a wide range of programs, which include: working with farmers and other land owners to encourage the use of conservation farming practices; securing through purchase and easements and leases remnant large marsh areas along the shorelines of our Great Lakes; working to control the damage caused to wetlands by the introduced purple loosestrife plant; providing water management facilities to restore, enhance and manage wetlands; and managing beaver pond habitat in our forested areas to enhance their biodiversity for wildlife.

As well, we are initiating cooperative educational programs with such conservation centres that exist here as Kortright, Wye Marsh and a number of other conservation authorities. Most of this work is done under the aegis of the Northern American waterfowl management plan in cooperation with a variety of other agencies.

We feel that the things we are doing in Ontario are not only good, but necessary. Some 80% of the wetlands in southern Ontario have been lost, and most of the remainder are degraded through a combination of drainage, flood control, water impoundment, soil erosion, introduc-

tion of pollutants and other forms of physical damage. Hundreds of species of plants and animals, many of which are rare, threatened and endangered, depend on the viability of these ecosystems, which, like the equatorial rain forests, are among our most productive on the globe.

While many of the remaining wetlands that we see out there today look healthy, they are not. Many no longer benefit from the naturally occurring cyclic drying and flooding which is necessary to maintain their health. Protection alone of these areas is not enough. If we cannot restore natural water cycling, keep out eroded soils, carp, loosestrife and pollutants, these areas quickly die. The enhancements and water management that we perform can restore traditional values of these areas. By managing water fluctuations, depths and quality, a diversity of natural plant species can flourish, which leads to a variety of cover and food required as habitat by a multitude of animals in these habitats.

While in principle we support the ideals of Bill 26, we are genuinely fearful that such legislation will bring this valuable habitat management work to a halt. Some so-called environmentalists hold a preservationist philosophy. Their ideal is to protect areas from any form of human intervention, whether it is positively or negatively motivated. There is the perception that ambient conditions should be maintained at all costs even if such habitats are no longer wilderness areas functioning under so-called natural forces.

Let's face it. Sadly, little of what remains in southern Ontario and many other parts of Canada can now be defined as either natural or wilderness. The solution is not to turn our remaining landscapes into defective parks, but rather, the concept of sustainable development proposed by the Brundtland commission and advanced by the Rio environmental summit should be our ideal.

It's true that Bill 26 establishes in its preamble the common and noble goal for Ontario as being the "protection, conservation and restoration of the natural environment." However, based on what I've stated above, I would like to know what is meant by "natural." Elsewhere early on, it sets out the purposes of the act being to "protect, conserve and, where reasonable, restore the integrity of the environment." Below this the values of environmental "sustainability," conservation of diversity and "encouragement of the wise management of natural resources" are mentioned.

These are important concepts, but we feel there is a need to strengthen and emphasize them further in the preamble and elsewhere, wherever possible, in the text. However, I do not like the limiting connotation behind the phrase "where reasonable" to "restore the integrity of the environment." With the tremendous loss and degradation of habitat we have sustained in Ontario, a much stronger statement is needed to encourage all that can be done to restore these areas.

In reality, despite these concepts espoused in the preamble, which, as I say, need further strengthening, in our view it is a certainty that the bureaucracy established by this bill will catch within its net a variety of works like those undertaken by Ducks Unlimited and others to restore, enhance and manage habitat. Those groups and

individuals that hold an anti-management view will use this legislation, we believe, to stop, block, delay and discredit the use of techniques in a province that is probably in most need within Canada of such measures.

Don't get me wrong; we are not fearful that such management work can be defended. Defendability and legitimacy of these efforts are not our concern. Rather, the reality is that there will be a tremendous increase, we believe, in delays and cost of undertaking such efforts with the EBR bureaucracy.

Already, under existing legislation, these burdens are nearing the breaking point, in our view. Resources for such habitat work are limited and must be invested wisely if we are to maintain the level of efficiency and credibility required for people to continue donating to our efforts in Ontario. Using precious resources in legal wranglings and consultant studies to feed the requirements of such a bureaucracy may quickly lead to very few benefits to Ontario's habitat coming out the other end of this process.

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Any national or international group faced with this situation would need to evaluate its options, which would include changing programs or investing in existing initiatives elsewhere where tangible results can still be achieved. Right now, I'm proud to say that every dollar donated by Ontarians to our work is put back into DU's habitat work in Ontario. I would like to think this could continue. However, even late last year, delays in project approvals saw close to \$1 million of our budget go unspent and need to be redirected to other regions of the country.

In the initial phases of work conducted by the task force that has led to this bill, these concerns were not evident to us and thus we did not raise them in the public forums that were available. We envisioned that the bill would provide enhanced protection for our habitat and environment and that work of the type done by Ducks Unlimited would be encouraged even further.

We no longer totally feel this way and are now legitimately concerned that this bill could bring some aspects of this important work to an end. Such concerns were expressed in a letter to Mr Wildman earlier in the year before this bill was introduced. This committee's hearings are now the final venue available to us to raise these issues and seek changes before the bill is passed into law.

To reiterate, we feel that, as a minimum, much stronger language is needed in the bill to not only recognize the value of habitat rehabilitation and management but to encourage and facilitate more of this action. This clarity must occur in the bill because, as I understand it, there will be no regulations to accompany this bill. I'd be happy to work with the committee to that end if this is the decision that is reached.

The Vice-Chair: Thank you very much for your presentation.

Mr Tilson: I'd like to spend some time, whatever time I have, on the topic of wetlands. This has been a topic that has been a problem. As you know, the province

of Ontario has had a great deal of difficulty, and I don't profess to be that knowledgeable about it other than I gather it involves a number of ministries: Natural Resources, Environment.

As to your statement that "Some 80% of the wetlands in southern Ontario have been lost and the remainder are degraded through a combination of drainage, flood control, water impoundment, soil erosion, introduction of pollutants and other forms of physical damage," these statements have been going on for some time, yet the chair of the Environmental Bill of Rights task force says, "We dropped the definition of 'wetlands' because we couldn't come up with a satisfactory definition; one couldn't be developed." Then he says, "It will probably be reinserted in the legislation after another round of public consultation." This was reported in the magazine *Farm and Country*, from July 20, in which the topic was the concern about the disappearing of the wetlands in the province of Ontario, and yet the bill of rights, for some reason, doesn't deal with it. I know you've dealt with it in your paper, but I'd like you to perhaps elaborate some more of your thoughts on the topic of wetlands.

Dr Wishart: The province has developed a wetlands policy, and maybe that's the reason it doesn't appear specifically in here. We were able, I feel, to get some of this stronger language about wetlands in the wetlands policy, but despite our ability to do that—and it was done in partnership with other agencies with which we work in delivering the North American plan—since the inception of that bill, we see a lot of problems with interpretation of that policy and inconsistencies among offices of MNR in interpreting how to implement that policy in relation to the types of works we've done here for 20 years.

We're seeing a difference or a change in attitude in the review of these proposals in relation to that policy, an inconsistency, and I believe that's why we're seeing a greater expenditure of our funds going into developing these proposals and to meeting with MNR to explain them. It's frustrating when you see that degree of inconsistency among MNR offices in relation to the similar types of proposals, and it's really led to a loss of \$1 million towards Ontario's habitat as a result. We've made these views known.

Mr Tilson: Have you got any suggestions for a proposed amendment? Now is the time. This committee does have the ability to put forward amendments with respect to wetlands. I know you've had short notice, but in the next period of time, if you can put forward any recommendation for a proposal that would satisfy your concerns, I personally would appreciate receiving that and I'd be prepared to—obviously, I'm not going to give you a blanket agreement but, depending on what you say, I'd be interested in hearing further from you on that.

The Vice-Chair: Perhaps we could put you on notice in that regard. If you have any future recommendations, all the members of the committee would appreciate it.

Mr Wiseman: I have a couple of questions. I want to pursue the wetlands part. There are draft regulations that are out on this bill. The very first one says, "Beginning January 1, 1994, the provisions of part II of the Environmental Bill of Rights, except for section 15 and

sections 19 to 26, apply in relation to the following ministries." The Ministry of Municipal Affairs is one of them, so within the Ministry of Municipal Affairs is the Planning Act, and under section 3 of the Planning Act is where the wetlands policy is. I think it's going to apply, and in the wetlands policy itself it talks about rehabilitation and actually providing funding for the rehabilitation.

In the section of the bill under the preamble, the definitions and purposes, it says, "'land' means surface land not enclosed in a building, land covered by water (which for greater certainty includes wetland) and all subsoil." As a person who moved the resolution in the Legislature on wetlands and the protection of wetlands, I certainly am quite adamant about the protection of wetlands and would not want to see them eroded.

Dr Wishart: Neither would I.

Mr Tilson: Put it in the bill.

Dr Wishart: We've been very supportive of the protection of wetlands. That's why we exist.

Mr Wiseman: In fact, the wetlands policy was used to stop the development on the wetlands in Simcoe, up near Lagoon City. There was also another decision handed down by the Ontario Municipal Board which took the wetlands policy and applied it, even though there wasn't a classification on the wetlands that it was being applied to, and said, "Because we think and because we have deputations by habitat experts that this is a class 2 or 3 wetlands system, we're going to apply it even though it hasn't been classified." I'm very hopeful that with respect to that, we are protecting wetlands.

Dr Wishart: I think we are, and that's the first step in the process. What we're saying is that in many cases, whether they're class 1, 2 or 3 wetlands, a lot of these areas have been damaged. What we're finding is that there is difficulty in some cases of coming up with acceptable techniques and methods and proposals to take it a step further from protecting these areas which, if we don't do anything with them, go through a process of degradation and further loss of value.

Mr Offer: Thank you for your presentation. I have a few short questions. After reading and listening to your presentation, I'm stumped. I'm stumped because of the fact that you don't see protection under the purposes for, in this case, Ducks Unlimited. The purposes talk about protecting, conserving and where reasonable, restoring. You've brought forward that issue.

But it also goes on to say under subsection (2), "protection and conservation of natural resources, including plant life, animal life and ecological systems." In this committee, though I spoke on second reading in support of the legislation, I bring forward some of my concerns. To me, I see wording here that does meet your concerns. I'm wondering why in your opinion it doesn't.

Dr Wishart: I don't think it's strong enough. That's the problem. Everything we do is directed towards protecting wetlands, whether it would be under any of the three or four programs we deliver. The first step is protecting. In some cases, that's all that's required, but there is often another step required to restore, rehabilitate and manage these areas to restore the values that have

been lost through pollution, loss of wetland cycle that these areas naturally and historically evolved under. A lot of that's lost now, and what we're seeing lately is a trend towards protection of these areas, which we think is the first step, but there's a lack of recognition that in many cases in southern Ontario there are other steps required.

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Mr Offer: Is it not a fact when we're talking about wetlands, and I've been involved in one particular area for many years, that the issue is not protection first, but the government always says the first issue is identification, and once identification has taken place, then protection follows? But the government's been clear that protection does not carry with it dollars, so people are left with, "Well, you've identified it, but now how else are we going to protect it if we can't have some funds to do that work?"

Dr Wishart: The wetlands policy in and of itself will lead to the protection of wetlands, so that's a great step forward. It leads the way in Canada, but I don't think it recognizes strongly enough the other steps that are required.

Mr Wiseman: If you could give us a written presentation on what you think these other steps are, we could perhaps have a better understanding of what it is you would like to see the next step be.

Dr Wishart: The other steps, in some cases, are the rehabilitation of these areas and management.

The Vice-Chair: I think you heard what some of the other members of the committee said. If you have an opportunity, it would be appreciated. Of course, it's up to you. We will welcome further submissions.

Dr Wishart: What are you looking for? Specific changes in wording, in areas we can insert something?

The Vice-Chair: Yes, that is always helpful. The more specific you can be, the better it will be for the committee members, but it's up to you.

Thank you very much for appearing before the committee. We look forward to perhaps hearing from you again.

SIERRA CLUB OF EASTERN CANADA

The Vice-Chair: The next presenters are here as well, the Sierra Club of Eastern Canada. Please go ahead.

Mr Michael Berger: My name is Michael Berger and I'm with the Sierra Club of Eastern Canada. I'd like to tell you a little about some of the issues we're working on and also some of the issues I'm working on personally. Then there's one specific example I'd like to spend a little more time on. I don't have written information around that particular issue, but I will be happy to follow up after the meeting in terms of written material that will be a little clearer on that particular issue. The concept is extremely important and I'd like to put the concept in front of the committee and at a later date follow up.

In terms of the club itself, we're obviously concerned about clean water, clean land and clean air, in very general terms, and I'll go a little more specifically into some of the issues we are working on.

We are concerned about such areas as wetlands, pesticides, climatic change in general terms, James Bay as well, and such specific areas as the Tatshenshini forest, the fixed-link bridge and Clayoquot Sound. One of the things we're doing in the near future is having a train that goes from eastern Canada to western Canada concerned about Clayoquot Sound. Hopefully, the government will be working in some areas to protect that, but we are also hoping to protect it. You've read a lot about it.

One of the areas we're also looking at is not only outlining some of the problems, but very specifically looking at the types of technologies that can be part of the solution. I'll mention one of them as I go along through my discussion.

Those are the kinds of areas we're involved in in general. Specifically, I'm involved mostly with issues around Toronto. Our concerns are to do with the expansion of the main sewage treatment plant. We're looking at that aspect of it, together with some other organizations. Hopefully, we're trying to not have an expansion, because we think there are other, more environmentally friendly ways of handling some of these. One of these is living machines and solar technology, which is an area I will come to specifically and describe a little more carefully in a few minutes.

First of all, I do support the bill. I believe it is needed in Ontario for reasons I'm sure a lot of other groups have shared, and I'll share a few of them with you as well.

We believe the public is important in decisions affecting the public. We believe the public often has important contributions to make, good ideas and different perspectives, and that the public can represent the diversity of views in society.

I'll come to why the Environmental Bill of Rights is important to my organization when I come to the details.

One of the other issues we're involved in is working on what's called a regional consultation committee, to do with the Interim Waste Authority. We have gotten together with a group of three people, with participant funding, to do an ecosystem approach. The report is this thick. I won't read you the report, but I do want to read you one or two lines, our vision statement, coming from the report.

You have heard a great deal about an ecosystem approach recently. Mr Charest mentioned it when he talked about the concern for the fish stocks off the eastern coast of Canada, that if they used an ecosystem approach as opposed to weighing the fish, we would be further ahead than we are now. I'd like to just read you the vision statement from our report, and obviously if anybody is interested in the report, we would be happy to share a copy with you.

"We have a vision of a new way of siting major facilities that considers the environment in a holistic way. This new way of planning recognizes and respects the interrelated impacts on the ecosystems in which we live. At the end of the day, these major facilities would be compatible with human and built environments while having the least degrading effect on the natural environment."

This is the vision statement of the report we have made. Unfortunately, at this stage we have not had the type of response from the Interim Waste Authority that we would like. Even though this is late in the day in the situation with the Interim Waste Authority, we and other people on the committee have been raising these concerns for quite some time, so they're not new. Once the participant funding was available, we started working together quickly with the three people who are working on our coalition for that. Two things we want to do:

(1) Even in this late stage in the process, we want the Interim Waste Authority to use a different type of approach in looking at the remaining sites. I think there is some time left, because I think that through the legal court cases it will take them still some time before decisions are reached.

(2) We think, looking to the future, that this is an important aspect and that this approach should be used.

Getting back to the point I think is crucial and one I want to be very specific on, in terms of why the EBR is important to our organization, part IV, the application for review section of the bill, sections 61 to 73, provides the opportunity for our group to ask the relevant ministry to review a policy in this regard, and I will give you an example of the policy. We want a new policy for proving and testing of living machine technology. This brings me to the point of what living machine technology is.

To put it in fairly simple terms, living machine technology is a technology developed by John Todd, who is a Canadian now living and working in the States. He's developed a technology which is old and new at the same time. It's a method of treating waste water using plant life, a system of using plants to treat waste water. It has the advantage today, which is extremely important, that it is environmentally friendly in that it does not use any chlorine at all and, secondly, it is cost-effective.

If we're looking at green technologies in the province, this is an area that requires and needs not only as much help as possible but as much encouragement as possible. Unfortunately, the opposite seems to be the case in many respects, and let me be specific on this one.

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There are several places where this technology is being developed here. One is the Boyne conservation area, about an hour and a half northwest of Toronto, where all the waste water there is treated using this particular type of technology. A second one is a building in Toronto, the main building The Body Shop has, which is in the York Mills-Bayview area. The opening was just several weeks ago. Some of you may have read about it in some of the newspapers; the Ottawa newspaper had a nice article on that. Basically they are dividing their waste water into two different streams. One is the regular stream from the washrooms and the sinks, and the other one is the commercial. Right now I'm not talking about not the commercial, because they're still doing more work on that, but I'm talking about the application for the ordinary sewage.

When we're talking about simple sewage, it doesn't have any toxins; we're not talking about heavy metals

and we're not talking about chemicals. It is being treated there using this plant life, in a room probably smaller than this, without odour problems. It's excellent technology.

Now, what is the problem with it? Well, I'm not a lawyer and I'm not a technician; I'm just a volunteer in a number of different environmental organizations. But let me try to give you this particular problem in fairly simple terms. I can get it better defined afterwards in written form, if you like, in legalese, but I think the most important thing is to get the concept across and worry about the legal part later on.

Let's assume this is the system of treating the waste water. On the one side the water from the source comes in; on the other side is the clean water. It's normal that you have to test the water at the beginning of the process and at the end of the process. Nobody disputes that and that is fine. The problem is, under the current situation, in addition to testing it at the beginning and at the end, the Ministry of Environment and Energy regulations require testing quite a few different places along the path here. That causes two obvious problems: (1) This is a technology we want to push as quickly as possible within the safety guidelines we're all concerned about; (2) we don't want to add to the cost. The Body Shop has gone a long way in using this technology. They're leaders in many ways and we want to encourage them and encourage others to do a similar kind of work.

If you have to test it—I don't know the exact number; it can be anywhere from five to 13 times—along this path, you are adding tremendously to the cost, so instead of trying to move the technology along, you are holding it back. You are making it more expensive, the very thing we don't need in this environment, this climate. This is one thing I very strongly suggest we look at, whatever it is within the legal framework that holds it back within a ministry. As far as I know, it's just the Ministry of Environment. Again, I'm no expert in that, but there's a question of how to move this technology along. This is an area I strongly suggest we should take a look at.

Another organization I belong to, the Coalition for a Green Economic Recovery, just had a conference up in Parry Sound where we looked at this technology. We looked at what the obstacles were and we looked at what the possibilities were, because we feel that Ontario can be a world leader in using this type of technology.

We're not saying it's for everybody, but it has certain particular uses. The treatment of septage is one of them; the treatment of lakes is another one. We don't have to look very far north of Toronto to find lakes like Musselman Lake and the Kettle lakes that have very serious water quality problems. This type of technology can be applied for that, and we are moving in that direction, working in conjunction with the clean water corporation. So there are possibilities and there are people who are environmentalists who spent \$175 a weekend to try to solve the problems and yet are being stifled by this type of problem. We see that we need help wherever it comes from in order to move this along.

I've explained the technology to you. Let me just add one point. I mentioned briefly that it's good for septage.

Septage is very difficult to treat and fairly expensive to treat. This particular technology is very good for treating septage. If we look at tile fields in Ontario, possibly southern Ontario, we're in a situation where, by regulation, people have to put in tile fields. At the same time we know that a large percentage of those, I think 50%—you probably have the figures better than I—do fail. So we're asking people to put in a technology which is a failing technology on the one hand, and we're not helping the people who are putting in technology that is not only not a failing technology but doesn't require chlorine and is cost-effective and where we can be a world leader. I think that's a real problem, and I think it's a real opportunity, on the other hand. I'm not looking at it so much as a problem but as an opportunity, so a new policy to encourage new technologies and ensure they do not get hung up on bureaucracy, however that happens.

In summary and in conclusion, we support the bill for the reasons I've mentioned and hope that this committee does approve the bill.

Mr Wiseman: Sorry; I missed just the last part. What you were talking about in the early part of your presentation has to do with solar aquatics?

Mr Berger: Yes, solar aquatics and living machines. Let me differentiate the two for a little. Or if you want to ask the question, go ahead.

The Vice-Chair: He only has two minutes.

Mr Wiseman: I just want you to know that there is some work being done by the government in terms of investigating solar aquatics. In fact, the whole talk about closing the loops and finishing off the whole process is something that is absolutely crucial in terms of understanding waste systems.

I would suggest that if you haven't and you don't know about it, you should take a look at the Ontario Science Centre. The province participated in the funding of a composting machine that's at the science centre, which is quite interesting in that there are plans to expand that into greenhouses and other areas, solar aquatics, as the funds become available; so that these systems can be created and can be shown to work, find out what the problems are and then expand them outwards.

Mr Berger: Just to throw it back to you for 30 seconds, we're not talking about composting, although we encourage composting as much as possible, of course. We're talking about living machines technology, and our example is the Body Shop. In the Body Shop, if things could be moved, and I'd be very happy if they are, so that the approvals could be granted and done as quickly as possible and done in a safe manner at the same time to reduce the bureaucracy, this would be wonderful.

Mr Wiseman: You mean in terms of certificates of approval and approvals? I agree with you on that 100%.

Mr Offer: From your concern and the response that solar aquatics is now being undertaken, the EBR would not be of any help to you. You would make your request for review under section 61 and the minister would respond by saying, "We're looking at it, thank you very much." Are you content with that?

Mr Berger: We would be content only if we had

results. If we didn't have the results through that, then my answer would be that we wouldn't be content and we would have to look at whatever else had to be done in order to get that approved.

Mr Offer: The EBR, in terms of the application, doesn't put a time frame on when the review is to be completed. It gives you some time frames for acknowledgement of the review and that it shall or shall not be instituted, but if it is going to be instituted, it does not give a time frame for its completion. Do you believe that should be given? Do you think it's possible that something like that could be given?

Mr Berger: Based on the answer I just gave to the previous question, my response would be that without a time frame, that would make it more difficult. If a time frame makes it easier to do and encourages new technology, which is what I'm suggesting, then possibly a time frame might be an approach we would look at.

Mr David Johnson: I apologize; I missed a bit of your presentation as well. I believe I heard you commenting on the Interim Waste Authority and I'm most interested in your comments on that. You indicated you're encouraging the Interim Waste Authority to take a different approach in that you felt there would be a considerable period yet that the IWA could go in that direction, that there will be legal court challenges etc. I suspect you're 100% correct: That's exactly what will happen. I wonder if you would elaborate. I'd be quite interested to know more of the details about the different kind of approach you would suggest for the IWA.

Mr Berger: As our time is limited now—a copy of the report has been sent to many people, and I'd be happy to make a copy available to you. I think that would give you the answer in a better manner than I could give you in 30 seconds or two minutes. It's quite complete.

1700

Mr David Johnson: I'd certainly appreciate getting that. We still have a minute, though, so I wonder if you could outline some of the major points.

Mr Berger: I have a two-page summary; again, rather than doing it by rote, I can make a copy of the two-page summary available to you. I have it here. It is a vision statement and a summary. I'll outline two or three of the points and then make available to anybody who would like it, further copies.

The Vice-Chair: You can leave that with the clerk. We can make it available to all committee members.

Mr David Johnson: You still have 30 seconds.

Mr Berger: There's an IWA process and an ecosystem site-selection process. The IWA process studies and evaluates parts of the ecosystem rather than the whole ecosystem. The ecosystem site-selection process focuses on the functions and interrelationships that comprise the system. That just touches very briefly on two different approaches, but the summary and the report will give you as much detail as you would like.

The Vice-Chair: If you could leave that with the clerk we will make copies available to all members of the committee. Thank you very much for appearing before

the committee and sharing your views with us.

CLEAN NORTH

The Vice-Chair: The next presenter is Kathy Brosemer from Clean North. You might want to speak to us a little about what Clean North is.

Ms Kathy Brosemer: Thank you very much. My name is Kathy Brosemer, I'm a microbiologist by training and I live in Sault Ste Marie. I work with a grass-roots volunteer group called Clean North.

Clean North is a volunteer group of about 200 people, about 50 of whom are active in various environmental issues and work. We formed almost five years ago around solid waste issues, specifically the blue box. Even still, our work is largely focused on solid waste, but we work on a number of other issues. As you are all aware, everything is connected, and we found we need to work as well on water quality, air quality, energy, transportation, a number of issues.

Most of the work we do could be considered to fall under the heading of public education. It's our belief that there's a great need for change in order to prevent the environmental destruction we're already seeing and further destruction, and ultimately the eventual end of human tenure on this planet. At the moment we humans are on a path that makes the end of human tenure appear to be inevitable. As a philosopher said, if we do not change direction we'll wind up where we are headed.

We believe the foundation for necessary change is education to allow an informed citizenry to make intelligent, informed and wise decisions about human activities and actions. As a result of that belief I have to make one statement firmly and unequivocally: We are in support of the Environmental Bill of Rights.

There are many segments to this bill that are not only necessary in an open, democratic society, but are also necessary for the development of environmental citizenship. The environmental registry, which provides an opportunity for citizens like me to inform themselves about environmental measures, the right to apply for a review of existing measures, the right to apply for initiation of new measures and the right to request an investigation of violations of environmental measures are fundamental to the exercise of responsible environmental citizenship.

No sector in isolation can change our course. Government, industry, commerce, academics—any of those sectors working alone will fail. We must all work together and we must provide the means for an informed citizenry to participate in this process.

I'll give you just a couple of the specific concerns to us in the Sault. One is that we're working on a remedial action plan for the St Marys River, one of the 41 toxic hot spots in the Great Lakes. We're beginning stage 2 of that process. We see a need for citizen participation in that process, and not just that process but processes that will lead into that: the development of further water quality measures, the review of existing water quality measures—comment on all of that.

Another issue that particularly troubles me: Just in the past few weeks we were informed in Sault Ste Marie that

we have a much higher incidence of lung cancer than the general Canadian population and they want to know why. The federal government has attributed it to lifestyle factors. I reject that. We live in a steel town and we have a high incidence of particulate matter in the air, particularly PM-10, particulate matter less than 10 microns, which lodges in the lungs and is an irritant to the lungs. It's already been shown that irritants to the lungs produce lung cancers. That's a concern.

We need more air quality regulations in the province and something that would fall under this bill for ordinary citizens like me to participate in the development of those air quality initiatives.

The final thing I want to tell you is that I have a strong personal interest in the whistle-blower protection. I had an experience over the last two years. I served on the board of a local conservation authority, and while I was on that board I uncovered some questionable business practices of that board. As a result of that, the general manager is now facing criminal charges. However, the three junior employees who brought those matters to my attention and to the attention of other authorities were subsequently harassed and then dismissed. They are all three still unemployed. They were dismissed at the end of 1992. Two of the three became new fathers shortly after their dismissal.

I have become painfully aware of the dilemma faced by employees who have to choose between their conscience and their livelihood. While those matters were not environmental matters, strictly speaking, I think whistle-blower protection needs to be extended as far and wide as possible, and this Environmental Bill of Rights takes a step in the that direction. One of the concerns we have with our major industries in the Sault is that whistle-blowers have no protection, and it's the people inside the plant who are most aware of the problems in that plant.

Mr Offer: Thank you for your presentation. I'd like to ask you a question about a matter which you haven't raised on the Environmental Bill of Rights; that is, from a community organizational standpoint, is there the need for funding in order to fully protect your rights? We've heard some presentations this morning with some suggestions for funding. I'm wondering, from someone who has a history of community work in this area, whether any thought has been put in that area.

Ms Brosemer: Funding certainly is of great interest to community workers. Ontario has taken a great lead in the Intervenor Funding Project Act, and I think this bill provides tools that could possibly be linked with the intervenor funding act. Perhaps the intervenor funding act could be expanded to cover certain of the functions that are provided for in this bill. It certainly would be useful.

Mr Offer: Another area deals with the question of the statement of values. One of the first presentations we heard said it would be better if it were a statement of principles, that values are something that are not ever meant to be enforced but are rather a goal to be attempted to reach; that there is a significant yet subtle difference between values and principles.

One of the concerns I've had is that we haven't seen any of those statements yet and I think there might be an

expectation in the mind of the general public that might not be met by the actual statements themselves, and I thought they would be a good subject matter for discussion.

But back to the question: Are there some thoughts around the whole question of statement of values that you might want to share with us?

Ms Brosemer: As a scientist and not as a linguistics expert, I guess I have difficulty making a distinction between values and principles. There may be something in law that I don't understand between the two words, but I don't feel it's something I need to comment on.

I do think this bill provides a number of tools, the strength of which we will see in regulation. It can be regulated to be as strong as I and people like me would hope. It could be regulated less, but we would see that in the ultimate implementation of the bill.

Mr Offer: Does the issue of significant regulatory advantage or opportunity concern you at all? In other words, we'll have an EBR with a particular framework that may be acceptable and agreeable to all, but the real essence of the bill will be found in the regulation. If these are significantly watered down, then we'll never have the full import of the bill.

1710

Ms Brosemer: I guess I assume that I'll have a chance to scream about that if I need to when the time comes.

Mr Offer: We'll wait till when the time comes.

Mr David Johnson: I thank you as well for your presentation, which you started by indicating that you and your group were interested in solid waste in the first instance and specifically mentioned the blue box program, which certainly is a major factor in waste management today. I wondered how you saw this bill pertaining to the waste management process, if you had any specific ideas on how citizens might use the provisions of this bill to involve themselves in waste management.

Ms Brosemer: I see the strength of this bill in requiring public consultation, that citizens can use that to comment on waste management master plans and siting processes.

Mr David Johnson: As you've been involved in this area of solid waste, is there a particular issue that's come up in the Sault over the last five years, say, involving waste management—other than the blue box, which seems to be one that most people have very large support for? But thinking back, over the last five years, is there some specific way you think you and your other 199 members might have used this bill?

Ms Brosemer: I think we still could use it. As a result of funding constraints and lack of political will, my city has yet to host a single household hazardous waste collection day. I see that there's a possibility that there could have been a means of asking for a requirement, in some way, of dealing with household hazardous wastes.

Mr David Johnson: Earlier this morning, there was a company involved in waste management expressing the concern that there could be an endless loop in terms of the environmental processes it may have to go through.

They're involved with the Environmental Protection Act, I think there's a water resources act or something of that nature and there are one or two other acts they are required to comply with and hearings etc associated with those processes. Then they're concerned that after going through all that, getting all the approvals, again this process may open up and it may be literally impossible to get any kind of approval for a waste management site, a landfill site, for example, or a certificate to carry on operations. I wondered if you had any comments on that or if you've had any experience in that regard in the past.

Ms Brosemer: Not direct experience, except that I think even without this bill we're headed in that direction anyway. I think the amount of not-in-my-backyard sentiment that's out there will delay and delay and delay mega-landfills. That's why I was really proud to have been part of a network of environmental groups that developed a set of position papers on waste management, including a position paper called No More Dumps: Positive Alternatives to Mixed-Waste Landfills.

I think that without this bill, it will become largely impossible to site a megadump and we should look at alternatives.

Mr David Johnson: Let's switch, if we can, to the planning process. You may not have been involved with that, but it sounds as if you've been fairly active in Sault Ste Marie. The planning process is another area I'm attempting to clarify with regard to this particular bill. Municipalities go through public hearings. There are zoning applications, official plan amendments, that sort of thing, committee of adjustment procedures. There is some concern being registered, because there's a large component of environmental issues that comes up during those processes, and the environmental considerations are very much at the top of the list.

Having gone through those processes, which are quite lengthy and many people complain they are much too slow, take too long and it's difficult to get a quick answer—through the OMB process it can take well over two years from start to finish—this may be tacked on to the top end of that, again making it a two- to three-year process. I wonder if you've had any experience in that regard or if you see that your group or other community groups in the Sault Ste Marie area might use this bill to have involvement with the planning process.

Ms Brosemer: I'm not sure at this point. Sault Ste Marie is starting an official plan review right now and it's having some meetings on that to which our group's been invited, the second week in November. I expect to get more information on it then to find out what it involves. I don't know a lot about the planning process.

I may be at a disadvantage in addressing a question like this as well; in Sault Ste Marie and the areas I'm familiar with we don't have double-layered municipalities. I'm sure the situation is different here and in most areas of the province than it is in Sault Ste Marie, so I feel a bit at a loss to answer the question.

Mrs Mathyssen: Thank you for your presentation. I have two quick questions. We've heard from a number of environmental groups, specifically this morning from Citizens Network on Waste Management. Mr Jackson

said he had some concerns that this bill didn't go quite far enough; he would like to see it provide more of a mechanism for citizens to participate in the creation of policy. I noted that you said, and correct me if I misheard, you thought this bill would help you and your group to participate in policy development around air quality issues. I wonder if you could explain how you see this working positively to help your group.

Second, I was very intrigued about the No More Dumps project you're working on. I think we can eliminate the carnage and the waste we perpetuate if we sort, separate, recycle and reuse. I wondered about your research on this. What kind of time frame do you see in terms of eliminating the need for the solid waste site?

Ms Brosemer: I think the bill sets out a stepwise procedure we can use in the air quality issues. The first is to ask for the information about what measures are there that we can use and deal with and whether our local industries are in compliance with those measures—freedom of information would get us some of that as well—and then to look at those measures to see where they may be adequate or may be inadequate, ask for a review where we believe they're inadequate, and ask for them to be strengthened in the course of that review.

Further to that, there will be areas where there are gaps, not just inadequacies but gaps, in the measures, and we can ask for the initiation of new measures to control things that were either unknown at the time or not considered a problem at the time the original measures were drafted, then, ultimately, request investigations of violations to give us the opportunity of protecting people who might know of violations and can provide information about those violations, who would otherwise be in fear of losing their jobs. There is a series of measures within this bill that are very important, that we can use as tools as we try to improve the air quality and the prospects for our children.

There's another personal reason on this, especially the air quality issues. I moved to Sault Ste Marie five years ago from a small university town, and that winter my son had a very nasty nasal congestion. He never really had a cold, but for months he had this congestion. In the spring it cleared up. Concurrently, in the spring, I took him to the doctor for a routine physical and I asked her what this might have been about. She said, "Where do you come from?" I told her, and she said, "Any industry?" I said, "No." She said: "It's the air inversion. Temperature inversion in the city in the wintertime holds the particulates in the atmosphere, and you don't see that in kids who grow up in the Sault because they're acclimatized to it, but kids who come in from somewhere else show this problem on a regular basis."

1720

So I have a personal interest in seeing that some of this gets cleaned up. Usually we, as Canadians, think of ourselves as net importers of air pollution from the States. I think in Sault Ste Marie it's quite the reverse. We export our pollution to the States, and that's another image I'd like to see cleaned up.

What was your second question?

Mrs Mathysen: No More Dumps.

Ms Brosemer: With the will to do it, we could make a tremendous amount of progress in a short period of time. I don't think we have the will yet. I think we need material bans from landfills, and we haven't seen nearly enough of that yet. I think we need to see a lot more development of facilities for storage of materials until markets develop, and I think we need to require mandatory source separation.

Those things are fundamental, and I think if we had the political will to do it, we could do it very quickly. The reason I just walked in at 10 to 5 is I was at the Recycling Council of Ontario's annual meeting these past two days and I'll be there again tomorrow, and there's a strong focus there from various sectors on the idea of product stewardship. With the participation of the private sector, we can make tremendous strides, and I look forward to seeing something develop in the next year.

The Vice-Chair: Thank you very much for your presentation and for coming before the committee and sharing your views. We appreciate your presence.

COMMITTEE BUDGET

The Vice-Chair: Unfortunately, the next presenter is not here yet; of course, they are scheduled for 5:40. However, we have one other item that with the permission of the committee we could take a look at, and that's the same thing they're doing in the House, approval of a supplementary budget. I think the clerk has distributed to you the requirements. Would you want to speak to it, Mr Carrozza, briefly?

Clerk of the Committee (Mr Franco Carrozza): The supplementary budget is based upon a number of points. The first is that when we first prepared our committee budget, the committee decided it would present a bare-bones budget, for approximately \$47,000.

We are now in the situation where we are in a deficit position. We went before the Board of Internal Economy, and it asked us to prepare a budget which would contain approximately four weeks of hearings during the winter. Based upon that, I proceeded to set before you a budget that contains four weeks for hearings and for one advertisement. If you'll notice, that's the fourth item from the top. That is to cover a deficit for the advertising on Bill 40 which we reviewed during the summer. Out of the four weeks we put aside just in case the committee has to travel, there are travelling arrangements—for travelling of the members and the staff. Basically, that's it.

The Vice-Chair: Any debate?

Mr David Johnson: Just a couple of questions. The \$47,000 figure was for the whole year, the budget for the whole year?

Clerk of the Committee: That is correct, yes.

Mr David Johnson: It's curious to me. I haven't been through this process in other years, but it seemed to me that there weren't any exceptional circumstances. It was Bill 40 we dealt with. There were only two weeks for Bill 40, weren't there?

Clerk of the Committee: A total of three weeks.

The Vice-Chair: I think the exceptional circumstance

was that the budget was set very low.

Mr David Johnson: It must have been set below reality, I would suspect, because there was no travel involved.

Clerk of the Committee: If I may answer that question, Mr Johnson, what happened was that we went back to look at the budget for the previous year, and the committee only met for one week during the summer and they only spent about \$25,000. So in reality, we doubled the previous year's budget.

Mr David Johnson: You budgeted for two weeks.

Clerk of the Committee: That's correct.

Mr David Johnson: And we actually met for three weeks and as a result there's a deficit. What's the actual to date, right now?

Clerk of the Committee: About a \$7,000 deficit.

Mr David Johnson: So it's about \$54,000, and what you're recommending is \$118,000 or \$119,000.

Clerk of the Committee: This covers four weeks' meeting during the winter recess.

Mr David Johnson: Do we have any idea what items the committee will be dealing with during that period?

Clerk of the Committee: No, I don't; only the suggestion from the House leader that I prepare for four weeks.

Mr Wiseman: If we don't spend the money, it goes back to the Board of Internal Economy.

Clerk of the Committee: That's correct.

Mr David Johnson: That's very true, but still, one needs to be as realistic as possible, because you could set every budget considerably high and say: "Don't worry. If we don't need it, we won't spend it."

Clerk of the Committee: Mr Johnson, if the board tells me to prepare for four weeks, I take its word for it.

Mr David Johnson: I appreciate your position; you have to do that. But away from your level, on the political level, I'm just trying to test whether that's realistic. I guess we have to check with the government members.

Mr Paul Wessinger (Simcoe Centre): If I might comment on that, I certainly think it is realistic. I have a private member's bill before this committee that I would like to have dealt with in the winter recess and I'm sure there will be other items. Knowing what legislation is coming up this fall, I would anticipate that there would be plenty of work for this committee to do in the winter.

Mr Offer: Just a question: You've put in travel and transportation. That's just in case the committee decides to go on the road?

Clerk of the Committee: That's correct.

Mr Offer: This was a matter that came up in another committee, and I'm not a regular member of this committee. It had to do with the issue of simultaneous interpretation. In another committee I was sitting in they were saying let's have the Board of Internal Economy or the Speaker decide on whether that's going to be part of it, as opposed to having each committee decide upon that issue on an ad hoc basis. I guess nothing has yet been decided.

Clerk of the Committee: This is in accordance to Bill 7, which the former government passed. Whenever we travel to a community that is classified as francophone, under the act we must have interpreters with us when the committee meets.

Mr Offer: I was thinking about that as something to do with the signing aspect, but that's not in this budget.

Clerk of the Committee: There is translation of material for the committee. For instance, if you have a report that you wish to be translated, that's separate.

Mr David Johnson: I'm in no position to know if this is realistic or not. It seems like a lot of money. I think we have an obligation to be as frugal as possible.

The Vice-Chair: Do you want to postpone the decision on this and talk to your colleagues?

Mr David Johnson: If it's possible.

The Vice-Chair: We've been living on deficit for a while, so—

Mr David Johnson: We could authorize the payment of the extra \$7,000 or whatever, make a recommendation that if the clerk's in trouble and they're going to put him in jail, that amount of money be covered in whatever fashion. But it would be good for me personally to see what the government has in mind for those four weeks. I suspect there's more than a private member's bill.

The Vice-Chair: I'm in your hands.

Mr Wiseman: I would move that we go ahead and pass it the way it is so that we can get the financial—

The Vice-Chair: You're moving that?

Mr Wiseman: Yes, because I know that at the end of the day we can remain frugal in terms of what we're spending.

The Vice-Chair: So you're moving the adoption by the committee of the supplementary budget as presented on October 28. Any further debate? All in favour? Opposed? Carried.

Could you take a look again to see whether the mining association is here? If not, I guess we'll have to recess. We're ahead of time. Frankly, I have to catch a plane.

Mr Offer: Maybe we could just adjourn.

The Vice-Chair: Maybe we will have to adjourn. They're not here yet. Can we adjourn for seven minutes and come back a little bit earlier? Okay?

The committee recessed from 1730 to 1738.

ONTARIO MINING ASSOCIATION

The Vice-Chair: We can start a little earlier. The Ontario Mining Association was scheduled for 5:40, so don't feel bad that you're a little rushed. We happened to have a cancellation and therefore we were finished a little earlier.

Ms Elizabeth Gardiner: The Ontario Mining Association welcomes the opportunity to comment here today on behalf of its member companies on Bill 26. I'd like to introduce my colleagues. On my immediate right is Henry Brehaut. He's senior vice-president of environment for Placer Dome Inc. Leonard Griffiths is environmental counsel with Fasken Campbell Godfrey.

Just a word about the Ontario Mining Association: The

OMA was founded in 1920 as a trade association representing companies engaged in the exploration, production and processing of minerals in Ontario. Our membership also includes firms providing services to the mining industry. A list of our member companies will be made available to the committee at a later date.

The OMA's 40 member companies account for the direct employment of over 30,000 people, and while most mining activities are located in northern Ontario, our members also mine salt, talc, gypsum, graphite and nepheline syenite here in southern Ontario. The value of minerals produced in Ontario is about \$7 billion annually, and if the semi-fabrication of mineral products is taken into account, these numbers increase to employment for about 200,000 people and a value of goods reaching about \$20 billion.

The OMA has an environmental policy that demonstrates the commitment of its members to environmental protection and the concept of sustainable development. We believe the environment can best be protected if all stakeholders—government, industry and the public—work together in a spirit of cooperation. Today, for your information, we brought a few copies of our new environmental publication called Sustainable Mining in Ontario.

The OMA has participated as much as possible in the development of the Environmental Bill of Rights. There is absolutely no question at all that the business and industry representatives on the task force did an excellent job. They really are to be highly commended. However, I'd like to point out that it is the resource industries such as mining and forestry that will be most heavily impacted by this bill, as our activities occur primarily on public lands. For this reason, together with the economic importance of our industries to this province, we feel it was really unfortunate that we were not invited to join the task force. Despite this, since April 1992, the OMA has met with members of the task force on several occasions. These meetings were very helpful and we appreciate the time spent with us.

The OMA is a clear and strong supporter of a healthy environment and sustainable development. However, we do not believe that the introduction of a new and separate statute is necessary for the purpose of environmental protection in this province. Currently, the mining industry is one of the most heavily regulated industries in the province, and while we agree that there is room for improvement in existing legislation, especially in the areas of public participation and the provision of consistency and transparency of decision-making, we do not believe that a separate statute is necessary to achieve these improvements, particularly a statute that creates increased costs to the taxpayer and that creates a whole new level of bureaucracy.

Due to the short notice we had in coming here today, we won't be able to submit written comments to you today, but we will within the next few days. That will probably make about the fourth submission we have made to date on the Environmental Bill of Rights. Thank you very much for the opportunity. I'd like to turn it over to my colleagues now.

The Vice-Chair: Thank you, and we certainly appreciate the short notice.

Mr Leonard J. Griffiths: My name is Len Griffiths. I'm an environmental counsel. I act for the Ontario Mining Association. As to the submissions Ms Gardiner referred to, I think you'll find that the submissions we're making today are consistent with the submissions we've made in the past.

My colleague Mr Brehaut and I will be touching upon most sections, in a very short period of time, in the Environmental Bill of Rights. I'll first be addressing the new cause of action. Mr Brehaut will then deal with the definitions very briefly. Hopefully, I'll have a chance to touch on the request for investigation and the Environmental Commissioner. Then Mr Brehaut will finish up with the review of instruments.

In our view, and Ms Gardiner touched on this, the direction that the Ontario Mining Association and its members want to take is not litigation-based. We want to avoid litigation and focus on consensus building and conciliation. For that reason, we don't believe that a new cause of action is required in the Environmental Bill of Rights. In our view, there are sufficient mechanisms in the current legal system that provide for causes of action for people who suffer damages or who are alleged to have suffered damages. That of course is the new cause of action that is provided in part VI of the Environmental Bill of Rights.

So our first position is that no new cause of action is required. We've always taken the approach that if it's not broke, we shouldn't fix it. We don't think there's anything broken in terms of cause of action, but if you take the view that there is something that's broken, in our view you have to look at the purpose of the Environmental Bill of Rights that we saw when it was first introduced, and that was some concern that government and business were not dealing with the environment in an appropriate fashion and as a result the environment was suffering.

Our concern about the cause of action that's been introduced is that it's focused on taking on private industry and is not government-focused, as we think it should be. For example, if you look at section 86 of the proposed Environmental Bill of Rights, it requires the plaintiff to serve the Attorney General with the statement of claim, and it then allows the AG to opt into the action and lead evidence if the AG chooses to do so. In our view, that's a step backwards from the original draft that was put out by the task force.

Indeed, we don't think the original draft was strong enough. We think the government is a necessary party for any cause of action and that to allow the government the choice to opt into the action is an error. We think it's more appropriate that the government be there, because after all, our best defence on behalf of a mining company that's faced with this kind of action is going to be that we followed the statute or the regulations and that the government participated in that and monitored us, and that now we're faced with an action by someone who alleges damage.

The government surely should be joined in that action.

We may have some difficulty if at a later date the government is not joined by the plaintiff and we try to bring the government into the action. We may not be able to. We're concerned that the government is being left out, that Hamlet's being left out of the play.

We also think that when you move down the list in the cause of action, the court itself should not be involved in the creation of a remediation plan in the event that it's determined damage has been suffered. That's section 98 of the Environmental Bill of Rights. In our view, it's more appropriate, if the court finds that damage has been caused, that the court would send that matter to the appropriate body which would normally be charged with creating a remediation program, such as perhaps the director under the Environmental Protection Act or with an appeal to the Environmental Appeal Board.

We just don't think the court is the right avenue to come up with a remediation plan, as contemplated by section 98. We look at the Michigan model, where under the Michigan Environmental Protection Act the matter is sent back to the people who deal with these in the normal course. The court retains jurisdiction in order to review, to determine whether or not the remediation plan was sufficient to accommodate the damage that was suffered.

On a very technical matter, in order to avoid causes of action being commenced where the conditions precedent to bringing a cause of action have not been met, in our view the form that's used for commencing a cause of action should include a requirement for the plaintiff or plaintiffs to indicate that the conditions precedent, such as making a request for an investigation and not receiving back the adequate response, actually is included in the cause of action before the registrar allows the cause of action. We're very concerned that there will be frivolous actions that are started and we want them screened out as soon as possible.

Mr C. Henry Brehaut: I'd like to turn now to the definitions under section 1, in the sense that there are two that give great problems. I guess I speak here partly as a businessman and partly as a person who has environmental responsibilities within my company.

To look at the definition of "environment," it is new. It adds to the existing definitions and is something I do not understand, and it will probably take a number of years in the courts and other venues to get some clarity so that I can understand it in making business decisions.

It is noted that in the preamble we talk about the "natural environment." That's the term that is used in the EPA, and it flows through and it has had good usage, good understanding, from all sides as to what it means and I believe it offers as much protection as the new definition. So in the sense of trying to get a process that we can see our way through and be able to make business decisions for the long term, I suggest that a return to the existing definition within other statutes and in use in Ontario be considered.

1750

The other definition is "harm." This is the one that perhaps gives me most trouble in that it's sort of undefined. There's no clarity, there's no measure. Any

contamination can mean anything in the present context. Again, perhaps a number of years down the road, if this goes forward in this form, we'll have some understanding and there'll be enough precedents and usage of it that it will take on a practical means, but at the present time, if I'm faced with a decision that is open-ended, if I have to deal with any contamination, I submit it increases my nervousness about making investment decisions in Ontario and receiving a return over the long term.

I submit that both of these definitions need serious consideration. They definitely need clarity and to come to something that I can understand, that I can deal with, that I can predict, that there's a process I can follow. It would be very helpful in the context of making business decisions.

Mr Griffiths: The next two points I'd like to make: First, going back to the if-it-ain't-broke principle, we don't believe there's any need for a separate section in part V of the EBR requiring a request for investigation. In the current regime, under the Environmental Protection Act, people can make complaints and they're investigated by the investigation force or branch or an abatement officer under the Environmental Protection Act and the Ministry of Environment and Energy.

In our view, that system works. To encumber it with another formal system that requires a response from the government, in our view is without justification. There's nothing we can see that's broken in the current system, and if the requirement is to have the Ministry of Environment be required to respond in some fashion to every complaint, then the Environmental Protection Act should be changed to indicate that. In our view, to add a formal process in addition to the informal process that exists now will only cause confusion and won't return any benefit to us.

On the last point I'm going to address, it may be semantics; obviously, it's semantics. The term "Environmental Commissioner" in our view gives the wrong impression. Under part III, if there's going to be this commissioner who does this, we think the Ontario Round Table on Environment and Economy, in its report on restructuring for sustainability, got it right. It's a sustainability commissioner that we're talking about. It's not just an Environmental Commissioner, but it's someone who is going to take into account all of these issues and come up with the right approach. So we recommend to you the recommendation that was made by that round table that the government of Ontario establish an office of commissioner of sustainability. It said it would be the equivalent of a Provincial Auditor.

Mr Brehaut has final comments on the instruments.

Mr Brehaut: Returning to the instruments, and in particular the draft regulations, I'd like to note that regulation 626 deals with approvals under the Ontario Water Resources Act. At the present time, we obtain a number of permits under this act. The industry obtains many permits under the act. There's a very clear process that we have to go through. There's a clear role for the government in issuing these permits and judging the environmental effect.

Standards have been established in many venues,

MISA being one where an exhaustive process has just been gone through. The best available technology and environmental effects have been thoroughly examined and we're coming to the point where the process is reasonably streamlined. It can get better, but we are working towards a process where we can work with the government, the regulators, and end up at the end of the day being able to get on with our business in an environmentally sound way.

I'd just like to note here that if this were a class II, it would add further complications and delays to the process. In that there are no hearings required now for such permit regulations, we submit it should be a class I. In saying that, we recognize that the minister has the opportunity to bump up to class II, but we submit that it should definitely be a class I requirement. In that regard, it would be in concert with the objective to streamline the process and enable us to move ahead in a reasonable manner.

Turning then to the application for review under subsection 61(1), the requirement that an existing policy, act, regulation or instrument should be dealt with, we submit the application of this act to instruments should be deferred for five years. We have difficulty understanding how this would apply to our industry, to individual instruments, especially those where you have to get renewals or modifications. The whole process seems very complex.

Given some of our concerns as to definition and other concerns with the act, we think the application of this act to instruments should be deferred for five years. It is something we have difficulty understanding: how this would apply to our industry, to individual instruments, especially those where you have to get renewals or modifications. The whole process seems very complex. Given some of our concerns about definition and other concerns with the act, we think the application of this act to instruments should be deferred for five years while a lot of the working realities are sorted out for the policies, acts and regulations.

On a different point, on 68(1), the purpose of this act on instruments is that there would be no application for five years preceding the date of application. A lot of business decisions do not get their money returned in five years, and we submit that 10 years is more appropriate. When a company is entering into certificates, getting new approvals, or even decisions we've made in the past, there should be 10 years before this act comes into force.

Finally, the question of timeliness comes back to the streamlining issue as well. We're very concerned in the sense that what we could end up with here is a process that has no end. Whether it's in the courts, waiting for responses from the government or whatever, there is definitely a need to have some time lines, some response times, so that a company, especially one like ours that is quite willing to enter into public debate to discuss the issues with the various stakeholders—if we do it right, we submit there should be an ability for a company to fast-track through the process. To put it in other terms, if there are deadlines, if a company has met certain requirements to communicate and engage the public in full

discussion, then there should be an onus on the government for a quick response.

We need the assurance that in any type of decision, again whether it's a new certificate or a modification, things could be dealt with in a reasonable time frame. In some instances, we could be faced with having to shut down our operation, just because we don't want to be in contravention with a certificate that has ended up being out of date, and be waiting for the process to go through. There's definitely a need for some timeliness to enter into the requirements in the process, particularly on response times when things do get into this process.

Just a concluding comment: To repeat what I've said, our company and the mining industry are willing to get out and to discuss issues in the public. We feel it's in our self-interest to do that, for a number of reasons. The intent of this act will of course encourage that, but by the same token, the act should be a carrot, not a stick.

The Vice-Chair: Thank you very much for appearing before the committee. A quick question for each caucus.

Mr David Johnson: An excellent presentation; I really appreciate it. I think it's the second time today we heard it described as something like a process with no end. Previously, a waste disposal company called it an endless loop. I wonder if you could give me an example in your industry; you mentioned a certificate that might need to be approved. I wonder if you could be as specific as possible about such a situation.

Mr Brehaut: Certificates govern the rate of production, the process you use, by implication it brings in your effluent limits, and so on and so forth. Often you just have to make one change. We're going through this in Quebec, although the same phenomenon exists in Ontario. We want to change our corporate structure, and just having the name change at the top means that five things get changed in the body of the certificate. By coming in and having a change, it opens it up now for this process to be applied. If there are the steps taken under this act and there's no requirement for the government to respond or, worse still, if it were to end up in the courts and there was an argument as to effect or whether there is harm—and I guess that's the biggest exposure we would have, if the degree of harm came into question—we're certainly left in a vacuum today. It's going to be a long day or long court battle before this gets sorted out and clarified to the necessary extent.

Mr Wiseman: I just have a couple of quick comments to make. All of the environmental groups we've heard today are really quite excited about the fact that the registry will put information they need in their hands. We heard from more than one that they feel this will speed up the process, that this will eliminate unnecessary requests for environmental bump-ups and that this will allow them to participate more fully, because no group takes on the onerous task of raising the kind of money necessary to take businesses or government to court. They don't take that task on easily, and I can attest to that fact because of my involvement.

But there is something that's underlying here, that most people in environmental groups—maybe not most; I

shouldn't categorize it like that, but there is a great, huge mistrust of government and there's a great, huge mistrust of business. What the people are saying in their support of this bill is that they want to be part of the process, and that being part of the process they'd be able to participate and evaluate. You say there's nothing broken. They would argue that's not the case.

Mr Brehaut: Our argument on nothing being broken is that there are a number of things that work very well within the system. In terms of participation in the process, I fully support it, because we support the same objectives. If we can have these discussions, get to some common objectives at the going-in stage, then we have that framework where it's not needed to come in with a hammer in the type of situations I've alluded to. As a company, we do that.

One of our mines in BC has been very productive. The Mining Association of Canada is involved in discussions on liquid effluent regulations right now where it's a multistakeholder type of situation, and I'm fully supportive of that. I'm supportive of that aspect of the bill, that it perhaps is not embodied into fact; it's de facto. I guess I can't argue against encouraging and enabling that to go on.

In early discussions with the people within the government who came to us to talk to us about the overall framework, that was the thing we've supported right from the start, as a means of bringing everybody to the table early rather than late.

Mr Offer: Thank you for your presentation. I'm sure all members have a number of questions they would like to ask you, keeping in mind the time of day. I'd just like to get your thoughts on whether the bill as proposed will result in more court applications, more matters before the court.

Mr Griffiths: We hope not, and I think that's a hope shared by the non-business environmentalists. But unfortunately, the way it's drafted now, we think there's going to be a lot of litigation to just figure out what the heck it says, let alone when you actually get into a request for investigation and then move on to a cause of action. The reality is that there will be actions under this bill. If there weren't going to be actions, there wouldn't be a part on new cause of action; it wouldn't be there. We're hopeful that the Michigan experience will be one that's shared by Ontario, but our biggest fear is that we're going to spend the next 10 years litigating what it means, let alone whether it does anything good for anyone.

Mr Brehaut: And the judge having to decide things which he's not competent to judge.

The Vice-Chair: Thank you very much for your presentation. I understand you're going to submit something in writing, and we will appreciate that as well; it will be circulated among the committee members. Sorry for the short notice, but you know how this works; you've been before the committees before. It's still very important to hear your views. The committee stands adjourned.

The committee adjourned at 1803.

Continued from overleaf

STANDING COMMITTEE ON GENERAL GOVERNMENT

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Morrow, Mark (Wentworth East/-Est ND)

Sorbara, Gregory S. (York Centre L)

***Wessenger, Paul (Simcoe Centre ND)**

White, Drummond (Durham Centre ND)

**In attendance / présents*

Substitutions present/ Membres remplaçants présents:

Cooper, Mike (Kitchener-Wilmot ND) for Mr Mammoliti

Eddy, Ron (Brant-Haldimand L) for Mr Brown

Lessard, Wayne (Windsor-Walkerville ND) for Mr Morrow

Offer, Steven (Mississauga North/-Nord L) for Mr Sorbara

Mathysen, Irene (Middlesex ND) for Mr Dadamo

Tilson, David (Dufferin-Peel PC) for Mr Arnott

Wiseman, Jim (Durham West/-Ouest ND) for Mr White

Clerk / Greffier: Carrozza, Franco

Staff / Personnel:

Anderson, Anne, research officer, Legislative Research Service

Luski, Lorraine, research officer, Legislative Research Service

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Standing committee on
general government

Comité permanent des
affaires gouvernementales

Environmental Bill of Rights, 1993

Charte des droits environnementaux
de 1993

Chair: Michael A. Brown
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STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday 4 November 1993

The committee met at 1001 in committee room 2.

ENVIRONMENTAL BILL OF RIGHTS, 1993

CHARTE DES DROITS

ENVIRONNEMENTAUX DE 1993

Consideration of Bill 26, An Act respecting Environmental Rights in Ontario / Projet de loi 26, Loi concernant les droits environnementaux en Ontario.

The Chair (Mr Mike Brown): The standing committee on general government will come to order. The purpose of the committee meeting this morning is to listen to deputations on Bill 26, An Act respecting Environmental Rights in Ontario.

ASSOCIATION OF MUNICIPALITIES OF ONTARIO

The Chair: Our first presentation this morning will come from the Association of Municipalities of Ontario. If you would like to come forward, the committee has allocated 20 minutes for your presentation and always appreciates some time to ask some questions and have a conversation with you. Therefore, you may begin, and if you would, for the purposes of Hansard, introduce yourselves.

Mr Terry Mundell: Good morning and thank you very much for the opportunity to speak to the committee this morning. My name is Terry Mundell and I'm a reeve from the village of Erin, a councillor from the county of Wellington, a vice-president of the Association of Municipalities of Ontario, and the chair of the association's environment policy committee. With me today is the committee co-chair, Mr Gary Cousins, who's the planning director for the county of Wellington, and Kelly McGee, who's the solicitor for the region of Ottawa-Carleton.

I'd just like to take this opportunity to, first of all, thank the committee members very much for allowing AMO the opportunity to speak to you and allowing us the opportunity to, in fact, go to our board of directors and get approval for this report today which is being presented to you. It is indeed sanctioned by the AMO board and executive as we speak today.

The association's representatives during the summer met with staff from the ministries of Environment and Energy and Municipal Affairs to seek clarifications on the implications of the bill for municipalities. The association appreciates the cooperation of the ministries' staff.

We have a number of concerns with the bill, and we believe the implications of this legislation for municipalities remain unclear and reveal the need for further discussion and analysis. In its 1992 report, the Task Force on the Environmental Bill of Rights itself recognized this when it stated: "Municipalities were not represented at the task force meetings and their perspective on the application of the EBR to municipalities and the Planning Act would be an important one....The task force concluded that it would be difficult to apply the EBR to municipal instruments without hearing the specific views of representatives of municipalities."

In its response to the report of the task force, AMO requested that the ministry work with municipal representatives towards understanding the implications for the municipal sector and to evaluate the issues related to applying the EBR to municipal decisions. Nevertheless, the final bill was developed without consultation with municipalities.

AMO therefore is unable to support the passage of the EBR unless municipal concerns are addressed. As a matter of principle, we're not prepared to support legislation that does not clearly identify its effects on municipal government.

Along with this presentation we are providing you with a summary of the association's recommendations and amendments, and I understand that copies of AMO's response to Bill 26 have already been distributed to committee members.

The Chair: That's correct.

Mr Mundell: Our foremost concern with the bill is that its effects on municipal government are unknown and that it will introduce more uncertainty into municipal operations. We have raised as-yet-unanswered concerns about the definition of and proposals and classifications for instruments, the appeals process and the allocation of responsibilities in circumstances where municipalities have delegated authority from the province.

I would like to briefly highlight each one of these concerns and introduce the principal recommendations of the association.

Uncertainties about instruments and other pieces of legislation: Under the bill the proposed definition of "instrument" is potentially all-encompassing. "Instrument" is defined as "any document of legal effect issued under an act and includes a permit, licence, approval, authorization, direction or order issued under an act, but does not include a regulation." This definition is too broad. The existence and all functions of municipalities are governed by provincial acts. As statutory entities, municipalities cannot act unless authorized by an act. It is arguable then that all instruments issued under all acts governing municipalities fall within the EBR's proposed definition.

The bill, through the sweeping definition of "instrument," casts a huge net over all activities of provincial and municipal government. The bill then provides three ways out of the net: The activity has no significant environmental effect, the use of the minister's discretion and future regulation. All of these means of not coming under the legislation are uncertain and out of municipal control. Despite assurances from the task force and ministry staff that there is no intention to ensnare the daily operations of municipal government in the net, the legislation provides no assurances. The all-encompassing definition of "instrument" contains the potential to catch most municipal operations. AMO has raised questions as to whether grants, sewer line extensions, subdivision

approvals, road projections and recycling facilities are instruments that are or will be subject to the legislation, but the association is not satisfied with the answers.

If all or most of the examples above are considered instruments, then this will have an impact on municipal infrastructure projects, which also rely on provincial funding programs and will be subject to the components of the EBR. For example, given that there is a relationship between the certificates of approval and provincial grants, the delays could cause uncertainty and the possibility of loss of provincial grants. They could be significantly affected by delays while appeals or inquiries are undertaken, especially when an appeal or inquiry is launched after a tender is awarded. Many municipal projects are seasonal in nature and cannot tolerate delays of several months.

The classification of instruments is crucial in determining notice, comment, potential hearing requirements and rights of appeal. A fair assessment will require technical expertise in waste management, water resources and air emissions.

However, the new sections 19 to 26 from the draft bill on classifying proposals for instruments are also not clear from a municipal standpoint. Prescribed instruments and their classification are left to future regulation with little guidance. It is not entirely clear what each classification means, and the rationale for creating these classification distinctions. We are not willing to leave our unanswered questions to the minister's discretion and future regulations. Therefore, AMO urges the provincial government to establish a process whereby municipalities participate in defining and prescribing instruments and developing the regulations which will establish the classification scheme for instruments that apply to pieces of legislation that govern the work of municipalities.

Furthermore, from reviewing the report of the task force and meetings with its chair in 1992, AMO understood that the Planning Act was not to be included under the Environment Bill of Rights except for provincial policies and regulations. The final bill, however, is ambiguous about the status of the Planning Act.

The provincial staff have informed AMO that the EBR may apply to the instruments issued under the Planning Act in 1998 and, in the interim period, the provincial government will decide on how to proceed with recommendations of the Sewell commission with regard to changes to the Planning Act. The province currently passes policy statements, usually environmentally related, under the authority of section 3 of the Planning Act, 1983. This is the key provincial instrument passed under the Planning Act. The status of this instrument must be addressed whether or not the EBR's principal components are applied to the Planning Act.

1010

Therefore, AMO has a second recommendation in this section: that the language of the bill be amended to recognize the existing public participation process already built into certain instrument approvals under the Planning Act, thereby avoiding duplication and ensuring an efficient government approvals process.

The appeals process: Provincial staff have assured AMO that the EBR would neither duplicate public participation processes under existing legislation nor require new hearings. However, the association has identified a certain lack of clarity about the appropriate appellate body under the bill.

The Ontario Municipal Board has broad appellate jurisdiction on land use and site plan control matters. It has the authority to act in the place of the Minister of Municipal Affairs in official plan policymaking.

It is AMO's understanding the purpose of section 38 of the EBR is to provide more residents of Ontario with access to appeal processes relating to class I or II instruments. However, the bill seems to create some confusion as to the designation and role of the appropriate appellate body.

Provincial staff have indicated that the intention in sections 38 through 48 was not to create any new rights of appeal. AMO recommends that the language of these sections, and in particular section 39, should be amended to more clearly reflect this goal; that is, a resident of Ontario who meets the requirements of section 38 is simply granted standing in an existing appeal procedure. In this way, the EBR creates no new right of appeal and therefore no new processes.

Delegated authority: The bill does not clearly define the scope of responsibility and accountability of those municipalities and local boards and agencies that have delegated authority from the province, primarily in relation to the operation of the electronic registry.

Under some provincial legislation, the minister may delegate certain authority to municipalities. While in some instances of delegated authority the daily administration of provincial responsibility is conducted at the municipal level, the final decision on a permit or approval rests with the responsible minister, yet the reviews of applications and recommendations concerning approvals come from the municipality.

AMO recognizes the benefits of the environmental registry, which include providing a quick and comprehensive public notice of proposals and decisions that might affect the environment. However, the bill does not indicate whether the requirements that apply to ministries in relation to the cost of the operation of the registry would apply to municipalities that have delegated authority from the ministry. AMO does not support the downloading of costs and the operation of the registry to municipalities.

The association recommends that the bill explicitly state that all responsibilities for the cost and the operation of the environmental registry, as well as any costs associated with the Environment Bill of Rights as a whole, rest with the provincial government and not with the authorities to which provincial responsibilities have been delegated.

Applications for review and investigation: The association strongly supports the enhanced whistle-blower protection for employees provided in the EBR. However, AMO is concerned that the bill has not addressed the fact that some applications or complaints may be largely

obstructive in nature. In recent years, at the local level there have been some cases where responsible municipal officials have been under investigation without knowing the source or the nature of the complaint. While being kept in the dark, the media hype around the controversy caused their reputations to suffer regardless of the outcome of the investigation.

The association recommends that the identity of those launching applications for review and investigation should become available upon request and furthermore that the minister should have wide discretion to withhold names and whether or not to proceed with the application.

In conclusion, I would like to reiterate that the association believes that the implications of this bill for municipalities remain unclear and reveal the need for further discussion and analysis. We are unable to support the passage of the EBR unless municipal concerns are addressed. Our foremost concern with the bill is that its effects on municipal government are unknown and that it will introduce more uncertainty into municipal operations. We are not willing to leave our unanswered questions to the minister's discretion in future regulations.

From the municipal standpoint, the effective implementation of this bill requires that municipalities be able to operate under a climate of certainty and predictability when carrying out planning and environmentally regulated activity.

The Environmental Bill of Rights must provide both effective procedures for public input and a reasonable time frame for government decision-making. In the implementation of this legislation, the provincial government should endeavour to avoid duplication with existing legislation. Such a duplication would be contrary to the spirit of streamlining in government today.

That concludes our presentation for today.

The Chair: Thank you very much. We have slightly less than three minutes per caucus.

Mr Steven Offer (Mississauga North): Thank you for your presentation. It's unfortunate that we have slightly less than three minutes per caucus to ask some questions on a wide-ranging presentation. I thank you for this. Certainly it's going to require some more investigation as to the real concerns that AMO has.

I'd like to ask you a question on this whole issue of instruments. I want to try to use an example, because I don't think we fully comprehend the importance of the instrument as you have outlined. If a municipality wants to construct a sewer or a watermain, it's going to have to get some sort of an approval or a certificate. Under this bill, any two residents can say, "We want you, Minister, to review the giving of that certificate or approval." A minister can say yes or no, but can say yes.

This, of course, the way I understand your presentation, puts the municipality in a problem as to timing, in a problem as to grants, in a problem as to seasonal construction. Is that in essence the concern that one has over the issue of instrument?

I have a related question. Bill 17 creates the Ontario sewer and watermain corporation, which will have some function in doing these things. I believe that the Ontario

sewer and watermain corporation will be exempt from the Environmental Bill of Rights. I'd like to get the ministry to acknowledge that, firstly, and secondly, whether that might be another problem that the municipalities may have.

Mr Mundell: I guess the issue which we have with instruments is indeed that we're very concerned with timely decision-making and with municipalities being able to move on with infrastructure needs. I think everybody's aware that the new federal government has announced a \$6-billion plan for infrastructure across this particular country. We're very concerned that the Environmental Bill of Rights may cause decision-making not to be done in a timely fashion and cause delays and cause some of the infrastructure needs across the province not to get addressed.

Mr Ted Arnott (Wellington): Thank you very much for your presentation. It was very insightful, and I think the government committee members have noted your concerns with respect to the lack of consultation that has surrounded this from day one as it affects municipalities, as well as the unknown impact that it will have on municipal decision-making. I just want to thank you very much for your insightful comments and turn it over to my colleague.

Mr David Johnson (Don Mills): I was just going to say a few words. I think there's something that later maybe the parliamentary assistant may wish to respond to in terms of the lack of opportunity for AMO to be involved in this process. I really can't believe that we'd go through such an important process, affecting all aspects of life in the province of Ontario, and not have one of the key organizations in this province of Ontario, representing the municipalities, involved in the process. I think the government has a lot to answer for in that regard.

One hardly knows where to start. I think you've fairly and accurately catalogued all the various aspects of municipal life that could be affected: the infrastructure, the planning. I can think of sewer projects, storm sewer projects for example, in Metropolitan Toronto that might be held up. All you need are two people who have some variance of opinion with regard to a storm sewer project that has to be implemented at a certain time of the season. I can think of a road project near a lake, for example. If there were a couple of people who disputed the exact route of the thing, they could hold it up. The list is almost endless. Where do you think the greatest impact is going to be on municipalities?

1020

Mr Mundell: I think the greatest impact on municipalities is the certainty in our day-to-day life and our day-to-day operations. Right now the bill is too ambiguous to allow municipalities to understand the rules of the game and how we play by the rules. That's really our concern. We need the bill tightened up. Believe me, we're not opposed to the intention of the Environmental Bill of Rights; what we're opposed to is the ambiguity in the bill itself and the lack of understanding from a municipal perspective of how we're going to operate in our day-to-day business. That's the largest concern.

Mr David Johnson: There need to be fixed guidelines so you know where you stand.

Mr Mundell: Absolutely.

Mr David Johnson: That's what you're saying, that's fair and that's before it's implemented.

Mrs Irene Mathysen (Middlesex): I would just like a clarification on a couple of things. This issue about ambiguity: It's my understanding that draft regulations were issued in early August and will be finalized in 1994. I wonder if you've actually begun the process of commenting on these draft regulations.

Secondly, it's also my understanding that MMA staff has advised you, AMO, that you will be consulted in the development of MMA's classification regulations. That is ongoing.

Thirdly, in your brief, you indicated that you had concerns because EPA may apply to instruments issued under the Planning Act in 1998. That's five years away and it would seem to me that this gives you a very clear time frame in which to respond or make a judgement and certainly to communicate with MMA.

Mr Mundell: I guess I'll take the last one first, the concerns about the particular Planning Act in 1998. We're very concerned that, if this bill goes into legislation, in fact we won't have the opportunity in all likelihood. It's far more difficult to change legislation than it is to be able to get to the legislation and make the changes before the legislation's in place and that's in fact what we're trying to do today. We're trying to be proactive instead of reactive to that particular situation.

I'm wondering if one of my counterparts would like to address the other two particular issues.

Mr Gary Cousins: I think we'd probably like some more clarity as to what the rules are or the principles under which the regulations will be formulated. We have seen some of the early draft regulations for the Ministry of Environment only, but we haven't seen them for other ministries. We can have input into those, but we don't think they go through the same level of scrutiny as a piece of legislation.

Quite frankly, with respect to the Planning Act, we would prefer to see it dealt with in the same way that the Environmental Assessment Act is being dealt with under the legislation. Both pieces of legislation have full public participation programs involved with them and we think the Planning Act should be given the same exemption as the Environmental Assessment Act.

The Chair: Thank you very much for appearing this morning. Your presentation has been most helpful to the committee.

Mr Mundell: Thank you very much and thanks to the committee members for their time.

The Chair: The next presentation will come from the Chiefs of Ontario.

Interjections

Mrs Mathysen: You can't have it both ways.

Interjections

Mr David Tilson (Dufferin-Peel): Twenty minutes for AMO to give a presentation.

CHIEFS OF ONTARIO

The Chair: We have the Chiefs of Ontario, if you would like to come up and take a seat by the microphones. I'd like to welcome you to the committee this morning.

Mr Gordon Peters: Good morning. My name is Gordon Peters. I'm the regional chief of the Chiefs of Ontario.

Mr Doug Maracle: Doug Maracle, grand chief for the Association of Iroquois and Allied Indians.

Mr Dan Miskokomon: Good morning. Dan Miskokomon, chief, Walpole Island.

Ms Nancy Kleer: Nancy Kleer, Morris/Rose/Ledgett for Chiefs of Ontario.

Mr Nelson Toulouse: Good morning. Nelson Toulouse, with the Union of Ontario Indians.

Mr Peters: We had asked for time on the agenda to be able to outline some of the specifics that we're dealing with, but what I also wanted to do this morning was talk to you very quickly in terms of where we're at and then I would like these other gentlemen to speak. If we get into really technical questions in terms of the process, we also have with us Nancy Kleer, who is our legal representative in these proceedings.

At this stage right now, as you know, we're trying as much as possible and where we're able to deal with the implementation of the Statement of Political Relationship and how we deal with the protection and the enhancement of our rights within this territory known as Ontario. Through the course of that and the development of the Environmental Bill of Rights, we've had very little contact and we've not played any significant role in terms of what has been decided to this point.

It's only been in the last maybe six months that we've had any significant role to play. We made a proposal to the Environment ministry and asked very specifically how our rights were going to be protected and how we were going to deal with the treaty areas and our traditional lands with respect to the environment.

I think one thing is clear, that we all have a vested interest in maintaining and protecting the environment. From our perspective there are many ways to be able to do that. I think the message that we were trying to bring across to people is that first and foremost we were talking about our relationship in terms of the government, the government relationship, and secondly, we were trying to remind people that we had environmental practices and a way of life long before anybody decided, in the early 1970s, that there was an environmental crisis in this country and in fact in North America.

When we talk about the environment, we're talking about something that goes way beyond simply dealing with a piece of legislation and trying to maintain some harmony with people who are violating the environment, but in fact we're talking about how we affect the long term in being able to find people who are going to live a life dealing with the environmental issues.

In the last couple of weeks we've had some very strong negotiations. We met with Mr Wildman in the

early part of October, I guess it was, on the particular issues that we had. We asked him very clearly to present to us a proposal and we said there's no point in us talking back and forth if we don't have something concrete on the table.

He did present us with a proposal shortly after that. We have responded with a counterproposal about what we feel are the best ways of being able to protect our particular areas, and at this point in time we're very close to achieving what we believe is a reasonable agreement in terms of the long-term protection of our lands.

We have at this point a couple of clauses which we've come to an agreement on. If you'd like, we'll read you those clauses, in particular in terms of the issues of where we're at.

In terms of the preamble, we said this clause was something we would deal with:

"First nations and other aboriginal peoples are stewards of the land, are part of the environment, have a special responsibility given to them by the Creator to protect, conserve and restore the environment for the benefit of present and future generations and have their rights recognized and affirmed by section 35 of the Constitution Act."

Then we said that we would deal with something that would resemble what has been commonly called a non-derogation clause, but in fact if we were dealing with the protection, we want it to go beyond that and start talking about the actual implementation. So what we talked about in this next section was how we were going to be able to deal with that implementation.

We have differences in terms of where this clause begins, but it reads:

"Subject to the extent of provincial jurisdiction in relation to government and territories of first nations and other aboriginal peoples, this act shall be interpreted and implemented to be consistent with the treaty and aboriginal rights recognized and affirmed by section 35 of the Constitution Act, 1982."

We believe that those proposed clauses are strong enough to represent the desires that we have in being able to deal with our territories, which means our treaties and our traditional lands. They also mean that there will be some implementation in terms of how the actual bill itself will be implemented.

We made provisions as well for the statement of environmental values. We said at this point in time that we didn't want to have our views integrated into the environmental values that would be developed by other ministries.

We said that over a period of time we would develop those environmental values as a statement and we would figure out at that point, through the negotiations, exactly how they were going to mesh and what would be required.

We also agreed that we would drop other sections, where we were dealing with sections 14, 20, 67, 77 and 90. We did that based on the assumption and the commitment that there was going to be a strong preamble and a strong section 10 that we were going to deal with about

how we were going to be able to advance those particular protections.

We talked and we discussed briefly about a joint forum that I guess would help us to understand how these things were going to be implemented and to find a way for us to be able to interact. I think what we've said at this point is that if we are successful in dealing with the first two items, in terms of the preamble and the implementation clause, then all those other items will fall into line, and we're open to discussions and negotiations about how those could actually be done.

1030

Just in terms of the overall comments I have, in dealing with those kinds of ideas that we've presented and that we've advanced in the negotiations, we believe those things are going to give us the kind of protection we need to deal with our special responsibility in terms of the environment and the land questions we have. We believe it's the beginning of a changing relationship.

We've tried hard to implement the SPR on a government-to-government basis. We've found it very difficult to advance those issues for a large number of reasons, including the fact that the federal government wasn't involved in our discussions. We find ourselves today at a point where we believe that since this is the direction that's being taken by the provincial government—it's provincial legislation—that's where the statement of political relations is expressly directed to, those areas of the provincial government that they can work with. I believe we can find a way to be able to have a very meaningful relationship in terms of this environmental bill, if in fact we do come to an agreement on those clauses I've outlined.

With that, I'd ask other speakers—I'll ask Doug Maracle—to speak to some particular issues they have because, as I said, certainly the process leading up to where we are now has not been one that we've agreed with and that we've been part of, and we'd like to be able to address some of those issues as well.

Mr Maracle: This is following on from Chief Peters in relation to the SPR. The SPR I think to everyone was a good foresight, and at the same time I think everyone was under the understanding, or at least a degree of feeling, that this was going to make things better.

At this point, on this particular document, I think it's pushing people apart for the reason of the process that was followed. There was very little time for consultation. In fact, the consultation process, as we understand it and as it has been sent through notification to both the federal and provincial governments, was not paid any time, any consideration.

As we've heard, the approximately six-month time line that we've had to deal with this is totally insufficient for our communities from the aspect of certainly not having the expertise within the organization or within our communities to interpret the intricacies of such a document and how it was going to affect our communities, let alone, without understanding it, being expected to have some input into it in a short period of time. For that consideration to be overlooked is unsatisfactory to the

Association of Iroquois and Allied Indians, absolutely and totally unacceptable.

We have joined the meetings that took place, and my view has been consistently that without that absolute process of meaningful consultation, it is pushing the governments away in opposite directions rather than trying to bring us—and more pointedly, I would think the first major issue that has come along of any magnitude since the SPR, something that is going to affect both governments, all governments, all people, should have been given more consideration. But instead, to try to accommodate the issue at hand, we participated as an organization and we did have some input. We are still looking for that consultation.

For the communities I represent, certainly there are some aspects of difficulty in communication with some of the elders in the communities, but I would think that in some other communities that others can speak to, over a period of time such as that, the degree of consultation, the lack of time even to have an interpretation, is totally insufficient. We do not accept the expediency that this thing has taken with our involvement.

We recognize that there was an invitation a while ago. At the same time, it was unclear what it was about; it was unclear what we were supposed to do with it. All we knew was that we had the feeling that this was something that was going to swallow us up whether we wanted it or not. I'm sorry to say, gentlemen and lady, that for the Association of Iroquois and Allied Indians, that's where we feel we're at.

Our organizations were not consulted in the proper manner but were in the process. We have been involved only to come to the table to try to find out what is happening. With the direction of Chief Peters, we are certainly behind him in his endeavours, as he had mentioned earlier, to try to bring this to a conclusion, but it has to be brought to a satisfactory conclusion. As late as last Friday and Saturday at the annual board meeting of the Association of Iroquois and Allied Indians, there was still some difficulty in the acceptance of this, not in the direction that the Chiefs of Ontario is going, but the direction that the provincial government is going.

Mr Miskokomon: Bonjour Chairman, members, guests and supporting chiefs. Yesterday, we talked about the SPR and Walpole Island as a signatory to the SPR. In Walpole Island, our members consider us the front line. When we say "front line," we're stressed out by pollution from the air and water, as well as the farm lands, with various chemicals that grow big crops.

What's happening recently is that a lot of things are affecting our territory, such as zebra mussels and purple loosestrife. It's not the blame of North America's boats visiting our territory and opening their ballast and the end result: danger to our environment. Also, the water is a very serious problem to us, with our intakes right from the St Clair River.

Also, in mentioning it, just to give you a feel for the sensitivity that we have when we live in a day-to-day stressful environment, Walpole is pursuing this Environmental Bill of Rights to incorporate the first nation

people's concerns. Again, with the time frame involved, there weren't adequate consultation and approval mechanisms by various organizations in Ontario. That's not the fault of anybody at this point; it's just a matter of getting a bill that'll be beneficial to all parties.

Let's keep in mind that we're here to coexist and comanage our environment. Our people are very wise on the environment and how to protect Mother Earth. We'd like to provide our resources in developing the Environmental Bill of Rights. I guess the inadequacy of the time frame didn't allow us the time to come to approval in Ontario from our aboriginal leaders and also the communities we represent.

I went to an IJC meeting in Windsor and talked about creating laws to put chief executive officers and presidents in jail for their subordinates' activities. That's a very hard statement, but if you put the top dogs in prison, they undertake to account for the activities of their subordinates, so zero discharges in the rivers as well as the Great Lakes system is what we're pursuing.

Last summer, we went to Sault Ste Marie. We walked on the boardwalk and we were talking about zero discharge. Up there, there's human faecal matter still floating into the river and the Great Lakes system. That's a definite problem.

With the time at hand, we need more involvement with our aboriginal leaders to come up with a consensus on how to protect our environment. Again, the key phrase is "coexist and comanage our environment." Meegwetich.

1040

Mr Toulouse: Good morning, Chairman Mike Brown and members. My name is Nelson Toulouse and I'm with the Union of Ontario Indians. What I basically have to talk about is maybe a certain ideology or philosophy. It really is sad, because our philosophies weren't really incorporated into the proposed bill on the environment. But I do congratulate you. I think one of the things that institutions and governments have the ability to do is to control and manage people. We can certainly never begin to think that we can manage or control the environment, and I speak of that personally.

Going back in history, one of the sad things, and this is going back quite a ways, is that before the arrival of Europeans we did have environmental laws in North America. I guess our environmental laws were a way of life. When I looked at the document that's been introduced in the House, it's really unfortunate, and at this stage I'm not sure if you can do anything about it, that one of the principles that was not adopted was respect.

With us, in our history, life sustained a balance. We're part of the environment, and to strive for a natural balance is where you control man, but to us the underlying principle behind all that was based on respect. It is really unfortunate that those kinds of things were not incorporated into the document, especially in the preamble, because the preamble basically sets out what the document should do in terms of the law. That is really unfortunate.

One of the things I would like to share with you is that, in terms of being aboriginal-specific, we were taught

that we were given certain gifts, and when Gord talked about our inclusion in the preamble he talked about that these were given to us by the Creator. But the other thing that needs to be understood is that we have to share that with everyone. In terms of the environment, the philosophies that we're trying to basically revive even in our communities, probably as I speak, are the things we need to share with you, because you are the makers of the laws. I think that if the fundamental basis of the law is based on respect, we can go a long way to managing people. You're in the business of managing people; unfortunately, I'm not.

With that, I don't know what kind of consideration those can be given, but for the record, I have to say that. Meegwetch.

The Chair: Meegwetch, Nelson. Thank you very much for appearing this morning. Unfortunately, time constraints mean we have to move on to the next presentation, but I thank you for yours and I'm sure the committee will carefully consider what's been said today.

ONTARIO WASTE MANAGEMENT ASSOCIATION

The Chair: The next presentation is from the Ontario Waste Management Association, Mr Taylor.

The Vice-Chair (Mr Hans Daigeler): You've been before us several times, so you know what the system's like.

Mr Carl Lorusso: My name is Carl Lorusso. I'm the president of the Ontario Waste Management Association. Joining me here today to also represent the association is our vice-president, Nancy Porteous-Koehle, and our director of public affairs, Terry Taylor.

The Ontario Waste Management Association is pleased to submit these comments on Bill 26, An Act respecting Environmental Rights in Ontario.

We are extremely grateful that the committee amended its agenda so that we now have the opportunity to make our submission in person. While a written submission also enables us to express our opinions, it does not allow for sufficient interaction between us. The subject matter of Bill 26 is complex and we feel it is best addressed in person.

That said, we hope the comments we make today will prompt your questions and that our answers will assist you in your deliberations.

First, we would like to provide some general comments and then we will suggest some specific amendments to the bill which we feel will enhance its acceptability and its effectiveness.

Citizens of Ontario should be able to participate in the decision-making process where those decisions have a significant environmental impact. However, there already exists an extensive and effective system of laws, regulations and government policies that particularly apply to the waste management industry. Over time, the public interest has been well protected by this system. Present government policies ensure that no decision is made on a waste management company's application for an instrument until public input is sought and considered.

With respect to the waste management industry, the

Environmental Bill of Rights will not substantially enhance the public's ability to participate in government decisions that relate to the industry. However, unless this bill is amended, tremendous uncertainty and a potentially unmanageable permitting process for the waste management industry will result. The bill in its present form will also discourage future investment and will become a barrier to new job creation.

The OWMA has the following observations to make about the bill as it stands now:

We believe the designated ministries should develop and present their statements of environmental values in draft form prior to the passage of this bill. We believe the public interest would be better served if these statements were available for scrutiny and comment at the same time as the proposed legislation.

We are concerned that, with respect to parts IV and V, a person targeted by an application for either review or investigation apparently will not be able to learn the identity of his or her accuser. This is a provision that jealous and unscrupulous adversaries can exploit if they want to cause malicious mischief or otherwise disrupt their competitors' business operations. Surely you would consider these to be unintended consequences of the legislation and would want to prevent them from occurring. Many would argue that the anonymity granted to an accuser is a violation of a basic right in the courts.

We are concerned that the right to appeal a minister's decision as described in part II is too liberal. We feel the public's right to question a minister's decision should have some limitation to prevent an endless appeal process.

In section 84, we are concerned with the use of the words "imminent," 84(1), and "reasonable," 84(2)(b). How can one foretell the "imminent" future, even given a balance of probabilities? In addition, won't any response that denies an application for investigation be judged "unreasonable" by the applicant? In the absence of much-needed clarification, the usage of these words in the bill is imprecise.

We hope this is not another example of what has become an all too common occurrence of legislators deliberately passing vague laws that are a way of avoiding political controversy, relying instead upon the courts to give definition and substance to weak legislation. You should take the necessary steps now to ensure that the courts are not overburdened because of the use of such indistinct terms.

Throughout the bill there are repeated references to ministerial discretion and how the use of that discretion will determine the outcome of many applications contemplated by the legislation. Our concern is not that the minister will have this discretion, but rather that the minister will not use it appropriately because of the potential political backlash that may ensue if a decision is judged to be anti-environment.

The following comments refer specifically to the waste management industry in Ontario:

Our industry is already heavily regulated, primarily under the Environmental Protection Act and the Environ-

mental Assessment Act. Every business operation in the waste management industry must have appropriate certificates of approval. This applies equally to haulers and processors and to the operators of transfer stations, material recovery facilities, composting sites and landfills.

1050

For the purposes of this submission, we suggest that proposed disposal facilities, which in themselves are the source of much public concern, be distinguished from all other waste management system facilities. No new landfill will ever be established in Ontario without first being the subject of a thorough public hearing.

We are not necessarily concerned about the impact of Bill 26 on landfills. What we are very concerned about is how this bill will affect our industry's attempts to obtain and retain certificates of approval for other types of waste management facilities, especially diversion facilities.

Even though there is at present no legal requirement to do so, the historical evidence confirms that current ministry policy is to routinely invite public and municipal involvement when new applications for certificates of approval are considered, either under the Environmental Protection Act or the Environmental Assessment Act.

In the case of an application for a new diversion facility, MOEE staff invite comment from the municipalities in which the site is to be located. In addition, the Planning Act provides for public consultation when approval of a proposed diversion facility requires either rezoning, site approval or official plan amendments.

It is our position that making waste management industry certificate of approval applications subject to the provisions of Bill 26 would only result in overregulation. Current ministry practices already recognize the public's right to participate and comment. Bill 26 would only prolong and complicate an already arduous and costly process.

Bill 26 also has some serious implications to those who have already been judged by the system and who have successfully obtained a certificate. In so doing, a waste management company commits a substantial amount of time and money as it proceeds through the approval process. Invariably, this process involves ample opportunity for public input and consultation.

Once a certificate has been received, its holder should be confident that the ministry's decision has some substance to it. There should be the assurance that the decision to grant the certificate will not always be subject to a public demand for review and possible revocation or alteration. It should be sufficient for a certificate holder to only go through the process once.

These certificates generally contain numerous conditions of operation which guarantee the protection of the environment and the public interest. The MOEE investigations and enforcement branch is well known for its vigilance in monitoring compliance with the conditions described in the certificates.

Indeed, if Bill 26 enables people to request frivolous reviews and investigations of existing certificated operations, it will deter further investment and employment in our industry. Potential investors in the private sector will

be reluctant to invest in new waste management facilities if it seems that the approvals and review process is never-ending. Bill 26 creates such uncertainty. It does not send positive signals to investors.

As the bill now stands, achieving the province's goals for waste diversion will also be imperilled. During the past few years, the province has been anxious to expedite the approval of new 3Rs facilities. These are the types of facilities that you contemplated when the permit-by-rule regulations were promulgated.

Should these same facilities, which all require certificates of approval, be subject to Bill 26, their startup would be further delayed. In a worst-case scenario, it could mean that these facilities would never get established. That means fewer jobs and fewer facilities to help achieve the desired target of waste diversion from landfill. We think that Bill 26 would work at cross-purposes with the new 3Rs regulations. This would be especially true if objections to the establishment of such new facilities were based on socioeconomic reasons rather than environmental concerns.

Meeting waste diversion goals would be further hampered if the current law-abiding practitioners in the waste management industry are forced to withdraw from the marketplace because of the prohibitive defence costs associated with actions contemplated in part VI, especially if these actions are specious.

Last week the delegation from Laidlaw suggested that the definition of "instrument" in part I be redrafted to exclude those instruments that apply specifically to the waste management industry. For example, such a new definition could read:

"instrument," except as otherwise provided under clause 122(1)(c), means any document of legal effect issued under an act and includes a permit, approval, authorization, direction or order issued under an act, but does not include:

(1) a regulation; or

(2) an approval obtained under the provision of the Environmental Protection Act, the Environmental Assessment Act or the Ontario Water Resources Act for a waste disposal site or a waste management system, as these terms are defined under the Environmental Protection Act, which for greater certainty can include a transfer station, waste processing facility, material recovery facility, composting facility, 3Rs facility or a landfill.

If the committee chooses not to redefine "instrument," then we propose in the alternative that the following amendments be made to Bill 26:

(1) Add to subsection 63(2): "(c) a review of an instrument made under part V of the Environmental Protection Act" and

(2) Add to subsection 32(1): "(c) a decision made under part V of the Environmental Protection Act."

The latter two amendments will provide at least some measure of certainty to companies that have already successfully completed the application and approvals process and that have received their certificates of approval.

While we would prefer the new definition of "instrument," the alternative amendments are the minimum that are needed to make the bill workable within the waste management industry. The OWMA notes there is a perceived need for portions of this legislation. However, we cannot agree with excessive regulation, which will be the inevitable result if certificates of approval granted under part V of the Environmental Protection Act are not exempted from Bill 26.

If you have any questions, we'd be pleased to answer them.

Mr Tilson: Thank you, sir. I appreciate many of your comments that you have made. Your presentation is most useful, certainly, in our concern with the government in developing the environmental bill as it is.

The one question I have, and it has come up before, is the new level of bureaucracy that's going to be created, not only the potential slowing down of the economy but the slowing down of the improvement of our environment, and you've referred to this, whether it be in certificates of approval or other examples. Can you be a little bit more specific as to the fears that you have, perhaps creating hypothetical examples that you fear this bill will create?

Mr Lorusso: I'll give you a past moment on that. The private waste management industry, as most people here know, has been given a mandate of diversion targets, those diversion targets of 50% by the year 2000. It seems like every step we take forward, we find one more barrier that prevents us from exceeding ahead quicker than we want to.

Every step of the way there's one more barrier, and I know it's coming to an end, but I guess we're a little disappointed in this because it really does directly affect the ability of opening and maintaining the certificates of recycling facilities. They can be taken away by means of non-environmental issues. By the time it's proven that they're not non-environmental, the whole perception of the company opening that facility will be lost. They'll lose interest and they'll lose the initiative to go ahead with it with the fear of that in the background.

Terry, you might be able to give some further examples of how that might affect it.

Mr Terry Taylor: I think a good example is, if you go back to when Waste Management was going to establish its recycling facility down in Etobicoke-Lakeshore on New Toronto Street, there was a situation where a company was prepared to invest something like \$35 million in a new facility that was going to provide 60 new jobs in the area. They went through the hearings process and they received their certificate of approval.

Had the Environmental Bill of Rights been in effect back then, you could have seen where even though it would have been politically acceptable to establish that facility, and there would have been economic benefits to having that facility established, the locals could have gone through an endless review process and thrown up all sorts of barriers to having that thing established.

You would have ended up, as what will happen if this thing happens and it isn't changed, that potentially new

facilities, potentially new jobs will just be left wanting because companies aren't prepared to go through the rigmarole of having their decisions to invest constantly reviewed and questioned.

Mrs Mathyssen: I would like to pursue that, because I think there's a misunderstanding here. It's very clear under the Waste Management Act that any types of facilities with regard to the 3Rs and waste diversion are established under permit by rules. Very clearly, they're not part of the prescribed act. In addition to that, under the EBR any frivolous complaints are not entertained by the commissioner, so I'm confused that you would be concerned about this. Very clearly, the objective here is to establish and make waste diversion part of our waste management culture.

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Mr Taylor: Ms Mathyssen, our problem is that we're a little concerned that, as many other terms in the act are a little ambiguous, the term "frivolous" might be ambiguous too. I go back to the example of the waste management facility on New Toronto Street. That just happens to have been built at the time when the MPP from Etobicoke-Lakeshore was the Minister of the Environment. You can appreciate the horns of the dilemma the minister could have been on if, on the one hand, it was a good idea to put that facility in there with the jobs and the investment it meant and, on the other hand, her own constituents said to her, "We don't think this facility should come here." Is the minister going to judge that to be a frivolous complaint? That's what we're trying to get around: not putting ministers in that impossible position of having to balance their ministerial responsibilities against their electorate responsibilities.

Mr Lorusso: You had a comment too, Nancy.

Ms Nancy Porteous-Koehe: Yes. All material recovery facilities are not under permit by rule. There are a number of MRFs that have to go through the part V hearing. The classifications for a MRF are different; we have different types of MRFs out there.

The other thing with MRF and MRF procedures and processing of materials is that MRFs are a brand-new animal and everybody comes in thinking they know how this animal has to behave. When you go for a permit, you go through for your instrument, you have to list a bunch of things you're going to do at that MRF, and that becomes part of your instrument and you must conform to that.

Now, say, two years into the processing procedure you find out that this piece of equipment isn't going to work or that we can do it better with another process. In order for you to bring that process into the facility, you then have to go back to the ministry and ask for some sort of relief from your instrument. You go back in and you ask to amend your certificate. That then opens that certificate up to your Bill 26. If somebody didn't like your facility back two years ago or four years ago when you opened your facility, this will allow them to come forward again and start you through a very arduous legal process, if in fact it's not judged to be frivolous, which I find is a real political word.

Mr Offer: Thank you for your presentation. On the last question and answer dealing with the issue of instruments and how they may be amended in the example of MRFs is exactly the question I was going to ask. Let me try to be clear for myself on this matter.

A corporation or an individual applies for a certificate and that certificate falls under the definition of an "instrument" under Bill 26, but to get that certificate or instrument you have complied and been approved by the ministry, so you've done all the things that the ministry, the minister, the bureaucrats, the law say you have to do. Then someone says under section 61, "We want that reviewed because we believe the government was wrong in saying yes to you," even though you've agreed and complied with all of the laws. Frivolous applications are totally out of the issue here. It's not a frivolous application, because it falls under section 61. What position does that put you in?

Mr Taylor: Double jeopardy.

Ms Porteous-Koehle: We're back where we started.

Mr Taylor: It's a never-ending process.

Mr Offer: The question is, how do you combat a review when you have received the certificate by complying with all existing laws?

Mr Lorusso: We agree with you 100%; it's exactly the way it comes out. What do you do? In simple terms, you never repeat what you've just done. That's the unfortunate thing. If it comes to a review and you've already spent the money and you've gone through the procedures that were outlined that were according to the law you were behaving to and were applying to, then you will not repeat it. The industry in itself will not make the same mistake twice. It will not open more facilities if that happens one time. They can't afford it.

The Chair: Thank you for appearing today. We will certainly take your comments into consideration during the clause-by-clause review.

ECO-COUNCIL OF PETERBOROUGH AREA

The Chair: The Eco-Council of Peterborough Area, Jean Greig. Good morning. You've been here for a few minutes; you understand how the committee operates.

Ms Jean Greig: Good morning to everybody, Mr Chair, members of the committee and guests. I'm really happy to be here to speak to the issue of the Environmental Bill of Rights. My name's Jean Greig and I'm here representing the Eco-Council of Peterborough Area.

Just a bit of background: My personal background is as an aquatic ecologist with some specialization in toxic contamination, but I've worked as both a paid employee and a volunteer on a variety of issues that range from water quality, water efficiency, natural areas protection, land use planning and so forth.

The eco-council is a Peterborough-based organization which acts as an umbrella group for smaller local environmental organizations in the area. We try to act as a network among those groups; we try to coordinate joint action on issues of common interest. The local groups that are part of our constituency, so to speak, are often working on more specific local problems, but the eco-

council has tended in the past and now to focus on broader issues and more long-term issues, including things like regional water quality, natural areas protection, planning for transportation alternatives and land use planning in general.

We've also participated in a number of public consultation processes on behalf of environmental groups of the area. Those include things like development of our county plan, we participated in the Sewell commission process, and we've also been following the Environmental Bill of Rights process. In fact, we submitted a brief just over a year ago in response to the Report of the Task Force on the Ontario Environmental Bill of Rights. We've had a long-standing interest in this process and we're happy to be back to make more comments.

I'll say straight off that in general we're strongly in support of the principles embodied in the Environmental Bill of Rights and, with a few minor exceptions, we're in support of the structure of Bill 26.

I wanted to comment on how the bill might be useful to us as an environmental group. I think that will change as we become more familiar with the bill and its provisions and we become better versed in how we actually can use it and what the further implications of the bill are. I can see our local constituent groups using some of the more specific provisions such as requests for investigation or access to the courts. The eco-council itself, because we're dealing with broader land use type of issues, will probably, at least at first, be affected mostly by the public participation aspects of the bill.

Let me give you some examples. Two things I picked out, just going through the information we have and going through the bill, were the processes such as the development of statements of environmental values that the ministries will be required to go through and policy development and in some cases policy review.

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First of all, the statement of environmental values: We recognize that this is not going to eliminate all conflict between activities of the various ministries caught under the bill and protection of the environment, but we think it's a great process for those ministries to have to go through, in some cases for the very first time, to look at their activities and how they actually impact upon the environment and how they mesh with the goal of protecting environmental health. We're happy that this process will have to take place under the bill, and we would be very eager to monitor that process and to participate in that process by providing our input to the various different statements.

It's our feeling that by including comment from the public in general and from environmental groups specifically there's going to be a greater integrity of those statements of environmental value, that they'll reflect a broader range of opinions and a broader range of information than would be done if the process were more closed.

Similarly with policy developments, we have been involved, for example, as I stated, in the process of the Sewell commission. Our group has a particular interest in

looking at the policies that may be developed out of that commission if its recommendations are implemented. We really appreciate that under this bill we would have the opportunity to participate directly and give our input into policies that are developed, just for example, out of the Sewell commission report. Again, we feel it's really important that this public input is there and that we have a right to that public input, that it will increase the integrity of the policies that are eventually developed.

One aspect of the bill we really like is the fact that there is a responsibility on the part of the ministers to respond directly to the comments made by different people or organizations that participate in the development, whether it's statements of environmental values or other proposals, so we know that our concerns have been addressed, so we have some explanation of why changes were or weren't made and have the opportunity to comment further.

There are other ways we would use the bill, I'm sure, but these are the two I focused on. I want to emphasize that in order to participate in the way I've outlined, we will undoubtedly rely very heavily on the proposed environmental registry. It's a way of inexpensively getting access to the information and the proposals and knowing what we can do and what we can comment on. We strongly support the establishment of such a registry.

We do have a concern about the registry that was stated in our earlier brief, and it's still a concern. It may have been expressed by others, but I think it deserves emphasis again. The language that's used on that registry, the notices of various proposals, needs to be simple and direct and in layperson's terms. It can be a very useful tool if we understand the information that's there, but if the language is geared towards specialists and lawyers, it's not going to help us at all. Well, it's certainly not going to help us as much; I shouldn't say "at all." It would be a lot more difficult.

Another minor concern we have with the bill is the minimum 30-day allowance for public input to proposals such as the statements of environmental values, new policy development and other proposals. We recognize that this is a minimum allowance and will not always be and may not often be applied, but our concern is that there will be cases where the minimum will be applied and the result of that will be a limitation of our ability to participate; not only ours but of many grass-roots groups.

As you undoubtedly know, most grass-roots environmental organizations and citizen groups in general that may have an interest in participating in these processes may only meet once a month, once every 30 days or less. They are often volunteer-based; they're often people who work full-time at another job and are cramming in citizen involvement in their evening hours, and to get together to get notification, gather the information, pass it around, get approval from the group as a whole and make a proposal in a 30-day time limit to something that may be fairly important could be extremely difficult. I can say it probably would be extremely difficult in most cases, especially if it's a technical document that requires some fairly substantial review.

We have a suggestion. I don't want to try and put it in

legalese by any means, but perhaps the minimum allowable time for a response should be extended to 60 days. Alternatively, what we suggested in our earlier brief was that a provision be made for groups to file a notice of intention to respond within the 30-day period, and then give a reasonable amount of additional time, maybe another 30 days, for actual submission of a response. We really would like to emphasize that responding in 30 days is going to be very, very difficult for a lot of grass-roots groups. So either that minimum should almost never be applied or we should think about really taking care of it and extending that time frame.

In spite of some minor concerns about the bill, I want to emphasize again that, in general, we strongly support Bill 26. We think it's a long-needed step and we recognize that it's not a cure-all. It doesn't deal with everything. There are things that we think still need to be dealt with in Ontario law, but as a first step to ensuring that there is protection of the right to a healthy environment and the right for the public to participate in decisions that are made that affect the environment in which we live, we think it's a really positive step.

I want to thank you for the opportunity to be able to come here and make that statement before you and clarify some of our concerns. I'll be happy to attempt to answer any questions that you might have.

Mr Jim Wiseman (Durham West): It's unfortunate that the previous group has left, but we've heard from a number of environmental groups that have indicated that they feel that through the registry and through the public participation process and the free access to information, this will in fact reduce the amount of frivolous legal actions or stalling techniques, because one of the things that frustrates groups now is that they don't have the information and, in the absence of information, they have to do a lot of speculating. In the context of doing all the speculating, they may go down roads that make them somewhat more cynical and may feel there is a conspiracy around—"If they're not telling us, why aren't they telling us?"

Ms Greig: Yes, that happens all the time, "Why aren't they telling us?" I haven't really thought about that aspect a lot. I think to a certain extent it's true that if the access to information is freer and information is more easily obtained, that may indeed happen. The other thing I think is that because there is participation up front, decisions that are made are going to, in the end, reflect a broader range of opinion. That is going to forestall a lot of complaints and requests for investigation and that kind of stuff in the future, because we've had a part in developing the proposals in the first place.

I think it's that whole concept of involving people, the public consultation concept of involving all the parties from the beginning and creating a really good system or a really good proposal and then, through that mechanism, avoiding a lot of conflict and intervention afterwards. So that's what we hope the bill will do.

Mrs Mathysen: My two questions I think follow along from Mr Wiseman. First, there was a concern expressed by the Ontario Waste Management Association that 3Rs projects might be scuttled entirely by individuals

or citizens groups under this new bill. Secondly, you said something earlier about the process of ministries developing regulations being a very healthy thing.

We also heard from AMO, and it expressed concern that while it was going to be involved in the development of the Ministry of Municipal Affairs regulations, they would have a negative impact on it. Do you see municipalities benefiting by going through this process of looking at the environmental regulations they need to abide by?

Ms Greig: The short answer is yes. I can take, for example, our own municipality and our official plan—this is just a particular issue in our community dealing with natural areas—which really makes no reference to environmentally sensitive aspects or areas in the city except in terms of hazard lands. So if they had to, for example, look through the official plan with respect to some of the types of values that are outlined in the bill of rights, I think they'd have to do some fairly substantial reviewing of the OP. In fact, it would probably bring the documents up to date with more of their practice, but they are essentially exempt from that process except, at this point, where citizens come in and make specific complaints or requests about how operations are going at the city.

If they started at the beginning and went through that process and involved the public in the process, then I think they'd have a much stronger long-term approach to environmental protection as a component of their whole operations. Sure, I think it would be very beneficial.

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Mr Offer: Thank you for your presentation. I understand the concern you have with respect to the registry and what should, and how it should, be put on that.

Under the bill, under section 61, any two residents will be able to have an existing regulation or instrument amended, repealed or revoked in order to protect the environment. My question is—and we've heard some earlier testimony that questions the principles underneath that—if an organization has obtained a certificate or an instrument by virtue of complying with all existing laws and by virtue of receiving all necessary ministerial approvals, what are the—if you could share with me as a citizen—bona fides of someone saying, "We want that approval revoked," even though the person has complied with the law?

Ms Greig: I haven't spent a great deal of time thinking about this particular point, so I'm not sure if I can answer it as fully as I might like to. In the first place, my understanding is that, although they can apply to have a review, that review will not necessarily take place unless there's some fairly strong evidence. They have to provide good evidence that it's actually necessary.

Secondly, I suppose if part of the purpose of the bill is to ensure that the government is following its own set of standards about protecting environmental health and if indeed there are current approvals processes that don't correspond to the types of values that are outlined in the bill or that we as a province think are important, then maybe those processes need to be reviewed. I think that's

what the Environmental Commissioner's office was designed to do: to look at whether the government itself, in its own regulations, is living up to its written commitment as outlined in the beginning parts in the purposes in the bill.

If it's a really legitimate complaint, then maybe it needs to be investigated and maybe the process needs to be changed. I guess that would be our position as environmentalists and as citizens.

Mr Offer: I appreciate it.

The Chair: Thank you, Ms Greig, for appearing before us today. You've been most helpful.

Ms Greig: Thank you. I will submit a written copy to the clerk.

The Chair: For your information, the committee will be commencing clause-by-clause two weeks from today.

ONTARIO FARM ENVIRONMENTAL COALITION

The Chair: The next presentation will come from the Ontario Farm Environmental Coalition. Good morning.

Mr Roger George: My name is Roger George. I'm the president of the Ontario Federation of Agriculture and one of the co-chairs of the Ontario Farm Environmental Coalition. On my immediate right I have Jeff Wilson, who is the chairman of AGCARE; that's Agricultural Groups Concerned About Resources and the Environment. As I say, Jeff is chairman of AGCARE and also a co-chair of our working coalition. On my extreme right is Terry Daynard, who is a member of AGCARE and who's also executive vice-president of the Ontario Corn Producers' Association.

I'm just going to take a very few minutes to go quickly through the brief that we have before you and then we'll leave as much time as we possibly can for questions. What we've attempted to do this morning, by coming to you as a coalition representing over 30 farm groups, is to make your life a little easier, and ours too, with lots of one-stop shopping and comments which we believe reflect the concerns of the entire agricultural industry, which I may remind you farms some 14 million acres of land in this province. So we're very visible environmentally and we're also very involved in the environment.

Our coalition, which was formed some three years ago, is co-chaired by the Ontario Federation of Agriculture, the Christian Farmers Federation of Ontario, AGCARE and the Ontario Farm Animal Council and, as I say, we have a broad membership across the farm community.

We have, as a coalition, played an active role in the development and consultation thus far on Bill 26, but I must say, starting off, that we have serious doubts as to the actual need for the Environmental Bill of Rights. We believe the approach we have taken as a farm community is certainly more efficient and we believe it will set standards far higher than anything you can possibly hope to legislate through government.

It would seem to us that we're entering into some confusion with the Environmental Bill of Rights, and it may have been simpler to make up various amendments to the Environmental Protection Act to avoid some

serious duplication of effort that we believe is going to be there. However, we are here to talk about the EBR.

As I said, we really believe the approach we've taken in agriculture by coming together as an agricultural community, recognizing the importance of the environment and coming up with environmental farm plans and a broad discussion paper on the environment is probably the more productive way to go on a sectoral basis. We are concerned about the cost of doing business, what it's going to do to the size of government in enforcing this legislation and how much ministry resources are going to be needed to do this and whether that will take away from existing ministry programs.

On the specific agricultural concern, we are concerned about wetlands. The original draft contained a definition of wetlands that we objected to. We are glad that has been omitted now, but we still call for the new definition of wetlands to be consistent with the Ministry of Natural Resources wetland policy statement, and we are shocked at this point in time to find that in Bill 26 it is not defined at all and is dealt with somewhat parenthetically as a subset of land definition. We believe it's essential that there be amendments to this bill that clearly indicate what does not constitute a wetland and we offer some advice on page 3 in our document for that.

If I could move to the purpose of Bill 26 on page 4 of our brief, we, as the owners of 40 million acres of land, have a vested concern with the purpose statement in part I of the bill where our brief talks about, "The purpose of this act is to ensure that activities impacting on public land and public resources are in compliance with existing environmental laws." We believe we need that type of statement in there to provide farmers with some assurance that citizens who are philosophically concerned with some agricultural activities will not be using the courts and nuisance complaints through the EBR to make farmers' lives miserable.

In that regard, we move into the Farm Practices Protection Act, which is named on five occasions in the bill, and we are somewhat concerned that existing legislation provides only minimal protection for farmers against these nuisance complaints which we envision under the EBR legislation. Indeed, it's going to be absolutely vital for the agricultural industry that if Bill 26 goes according to plan, we are going to need to strengthen our legislation, the Farm Practices Protection Act, and I hope we can have some more discussion on that in a few minutes.

The Drainage Act: The first draft contained references to the Drainage Act. We are pleased to see that the new draft regulation pertaining to the EBR implementation schedule makes no reference to the Drainage Act, because clearly drainage becomes a vital part of many farmers' land management and environmental management. We have a lot of concerns about that.

Just finally on the implementation schedule, we have always advised the government to move slowly and carefully on the EBR and we are pleased that it has taken our advice over the last three years, has heeded our

We recommend that the target dates for the implementation of this legislation again be set back, certainly to do some careful study and make sure that the legislation is properly tested by the Ministry of Environment and Energy before it's required to be implemented by other ministries.

Very clearly, as we move through, doing our business as farmers concerned about the environment, with our own environmental farm plans, we don't want to have the grief of having to worry about our ministry getting involved in the quagmire of EBR at a time when we are trying to encourage our farmers, through environmental farm plans, to be proactive and do things that way. It comes back to the fact that we believe our approach to environmental farm planning on a sectoral basis through the farm community is vastly superior to anything this government or any other government can do legislatively.

With that, those are essentially our overall comments. Let's take whatever time we've got, and my colleagues will join me and help me to answer questions.

1130

Mr Offer: Thank you very much for your presentation. I want to go to page 4 of your presentation, where you talk about the purpose of Bill 26. The reason I bring forward that area is because it seems in your presentation you are assuming that the bill applies only to public lands as opposed to privately held lands. I'm wondering, first, if that is the case. Second, maybe we can ask some clarification from government about whether that's indeed the situation.

To be more precise, you say that when Bill 26 is "considered in its entirety, it is clear that it will apply to public lands and public resources as opposed to private," and you have proposed an amendment in the purpose to underscore that. Is it your belief that the bill applies to just public lands and public resources?

Mr Jeff Wilson: I think the key component in there is the phrase "as opposed to private" and that it will be only used to deter illegal activity. It gets a little fuzzy then, because the main intent, in our estimation, is geared at public land, except where someone sees a practice that in their opinion could potentially border on the definition of an illegal activity, and then they would be able to utilize this piece of legislation.

Mr Offer: In general, you believe this bill applies to public lands, and only to private lands if there is some illegal activity being carried on.

Mr Jeff Wilson: Yes.

Mr Offer: I think this is crucial. Might I ask the ministry to respond to whether the bill has a broader application than the Ontario Farm Environmental Agenda Initiative puts forward?

Mr Bob Shaw: The bill itself applies to the environment broadly, and that encompasses privately held lands as well as publicly held lands. But the bill makes a very important distinction under the right-to-sue provisions. Those provisions apply only to public lands, whereas a request for an investigation of a possible contravention of the law could relate to a contravention taking place on private lands or on public lands.

Mr Offer: In essence, the bill applies to public and private lands and the only exclusion is the right to sue, but otherwise the bill has a broader application than I believe is anticipated in your presentation.

Mr Terry Daynard: Could I just make a comment? We didn't address that in the brief we've presented here, but we did have a lot of discussion with the committee that was involved in drafting this bill.

The discussion actually involved section 82 as it is at the moment. It talks about public resources and it defines "public resource" as meaning air and water, with some qualifications. Then, most critically, in clause 82(e), it talks about any plant, animal or ecological system associated with any air, water or land. Well, the land is public land, but air and water are vague in this.

We got a lot of words of assurance from both the ministry and the committee that it was not their intent to have clause (e) interpreted very broadly, but there is some unease, I would have to say, that any plant or animal or ecological system associated with air or water could include most of our topsoil, because topsoil is chock full of living organisms, air, water and ecological systems, earthworms and so on. There is some unease about it, but when we came to address major concerns, we chose not to put it in the main brief.

Mr Tilson: Mr Offer's time has expired, but I've always got the impression when speaking to anybody from the agricultural community exactly what Mr Offer has been saying; that is, you can be assured there's no problem with respect to the agricultural community. But now, having heard a clarification from the ministry, my impression is that the bill will be going much further than perhaps people in the agricultural community had ever dreamed. Can you comment now, probably without having a chance to consult among yourselves?

Mr George: I think it probably gets back to our concern about needing our Farm Practices Protection Act extension. Clearly, it isn't a question of whether we're going to be sued; it's a question of having all these nuisance complaints.

People can make life fairly miserable for us. If they see a farmer going down his field with his sprayer or his manure tanker, the next thing you know, you've got all sorts of enforcement people from various ministries on the doorstep to cease and desist until this gets sorted out. You may not end up in court, but you can lose an awful lot of time fooling around here while that particular nuisance complaint gets dealt with.

We just don't have the protection in the Farm Practices Protection Act that I believe the authors thought was there. That act gives us very minimal protection against nuisance complaints about odour, noise and dust, and that's it.

Mr Tilson: From what the ministry has just told us now, it appears you have no protection.

Mr George: We still assume that the Farm Practices Protection Act, surely to goodness, supersedes the Environmental Bill of Rights. That was our assurance at some point in time within the narrow mandate of that legislation.

Mr Tilson: Is there something in the legislation that clarifies that?

Mr Wayne Lessard (Windsor-Walkerville): It's referred to in subsection 84(4). That refers to the Farm Practices Protection Act protections.

Mr Daynard: The problem is, when you read the Farm Practices Protection Act, you find that it in turn is subordinate to a whole series of other acts, most notably the Environmental Protection Act. We have been advised by lawyers that there's some fair ambiguity in there. If anyone ever chose to challenge this in terms of just what teeth there are in the Farm Practices Protection Act—or if it could be obliterated by the Environmental Protection Act, then there's some confusion on our part about the relationship between the Environmental Protection Act and the Environmental Bill of Rights.

Mr Tilson: Doesn't that only have to do with civil action? That has nothing to do with what Mr George is talking about. Someone complaining about how a farmer's operating is quite a different thing. He may not be able to sue him, but he can sure slow him down a lot. Maybe I'm not understanding the sections, but section 87, the way it's been described just now, involves civil proceedings. In other words, the assurances that perhaps have been given to you or your organization simply aren't true. At least that's my observation.

Mr Daynard: We would go so far as to say that there's a high level of uncertainty. I suppose we'll never know until some of these things are tested in court. We do worry a lot about the nuisance suits.

We also have to say, and we put emphasis on this major point, that we've accepted that the government is going to have an Environmental Bill of Rights—that was very clear—but we philosophically have a lot of problems because we believe this was basically drafted by lawyers from a legal standpoint. That's not the approach we believe is the appropriate one to take to address environmental concerns to begin with, and it's not the one we're using. That would be the biggest unease we have about this bill.

1140

Mr Wiseman: I'd like to go back to this whole idea of nuisance requests or whatever. I'm going to read Section 61; it needs to be quoted because it's been misquoted all morning.

"Any two persons resident in Ontario who believe that an existing policy, act, regulation or instrument of Ontario should be amended, repealed or revoked in order to protect the environment may apply to the Environmental Commissioner for a review of the policy, act, regulation or instrument by the appropriate minister."

That means they can apply. Then it goes on to describe the process, and then it says in section 62:

"(1) Within 10 days of receiving an application for review, the Environmental Commissioner shall do the following:

"1. Refer the application to the minister or ministers for the ministry or ministries that the Environmental Commissioner considers appropriate to review the matters raised in the application.

"2. Where an application is referred to a minister for a ministry not prescribed for the purposes of this part, give notice to the applicants in accordance with subsection (2)."

The minister later on also has a prescribed set of criteria that have to be followed.

It seems to me that any frivolous activity in terms of the use of section 84 or section 87 in later parts of the bill would mean that unless the farm protection act was altered to change the way you could do things, any application by two citizens in terms of practices that are already acceptable—it would have to be changed by regulation by the minister or by legislation. Therefore, the likelihood of anybody winning any kind of lawsuit under section 6 I think would be very minimal, especially as they would be turned down previously by the minister in terms of change. Have I got that roughly right?

Mr Jeff Wilson: Notwithstanding, though, it's going to take significant resources on behalf of the plaintiff, whether that be the farmer, but also on behalf of the specific ministry that will be involved, in this case probably the Ministry of Agriculture and Food. We found with our environmental farm agenda, which was an initiative from within the farming community to begin a process through environmental farm planning to resolve some of these outstanding issues that also border on the Farm Practices Protection Act, that this is a way, in partnership with various ministries, we can develop a roadway or a pathway into the future on environmental issues and concerns, including how we deal with environmental concerns in an agricultural context.

One of our main concerns is, is there a danger that that whole process, which has phenomenal agricultural commitment in terms of resources and money and government commitment, could possibly be sidetracked by a minister or ministry responding to frivolous actions brought about on a continuing basis?

The Chair: Thank you, gentlemen, for appearing this morning. I can see we're going to have some interest in a few clauses during the clause-by-clause.

ONTARIO FOREST INDUSTRIES ASSOCIATION

The Chair: The last presentation this morning will come from the Ontario Forest Industries Association, Marie Rauter. Good morning.

Ms Marie Rauter: My name is Marie Rauter and I'm president of the Ontario Forest Industries Association. With me today I have Eleanore Cronk, who is representing us as counsel, and she works with Fasken Campbell Godfrey. If you get into some of the detailed words I am having difficulty with, perhaps she'll be able to answer some of your questions.

Our association is a provincial trade association that represents 21 member companies. We're engaged in everything from pulp, paper, lumber manufacture, and also into forestry operations. Because it is a resource-based industry, the Environmental Bill of Rights will have a greater impact on the forest industry than it will have on any other industry sector.

I'm pleased to have the opportunity to comment and to reiterate our commitment to sustainable development, and

that is achieving a balance not only between the environment and the economy, but in the case of our industry it also contributes to the stability of communities, particularly in northern Ontario.

Our members do support the goals of the Environmental Bill of Rights. At a meeting we had with some of its authors, one of the authors stated, when we were discussing the first draft of the bill, that it had been created to give the public an opportunity to protect public resources where the government fails to do so. He said it was written to create an environmental ethic for the bureaucrats and to add consistent consideration of the environment to the decision-making process.

These are sound objectives. But in terms of some of the specifics, we still have many of the concerns that we expressed in our first submission, which we presented to Ruth Grier when she was Minister of the Environment just about a year ago. I've brought a copy of that and I think you also were distributed a copy. Many of the comments that were relevant then are still relevant today.

Much of our industry's focus has been on trying to make sure that we can streamline the government process, to eliminate duplication and to try to make the best possible use of very severely limited resources. As an industry, we understand the tough decisions that all of you will have to make. In our particular instance, these recessionary times have forced our companies to restructure and downsize. In the last year alone, we have lost 3,000 jobs for Ontarians. That's fairly significant. With the tough choices that are being made in both the private and public sectors, we are concerned that, as written, the bill of rights will add layers of process while duplicating some of the existing and past efforts.

For example, it has been six years since our timber management environmental assessment hearings began and we are still awaiting the rulings of the board. The decisions which emanated from those hearings will have the benefit of intensive public input and should not be subject to further review under the Environmental Bill of Rights.

Under this current draft, instruments such as licences already covered by the EA decision are protected, but we would recommend that, to avoid duplication, this protection be extended to cover all decisions from that board.

It's important to note that while the industry can support the broad objectives of the bill, we cannot determine its impact until the regulations have been fully defined. We need to have those regulations released for comment not only by us but also by the general public.

As an example, we are concerned about the impact of the environmental registry. On the one hand, it could represent a vast improvement over the existing ad hoc processes, since it should make it easier for everyone to access information on policies and initiatives under way.

However, our industry requires thousands and thousands of licences and approvals each year. If each one were listed on the registry and potentially routed through the process, increased costs and project delays could effectively shut this industry down and could effectively shut down many of the ministries as well.

The ministry has provided some relief to the uncertainty by releasing some partial regulations indicating that approvals required under the Environmental Protection Act, the Water Resources Act and the Pesticides Act will be listed on the registry and categorized as class II approvals.

We believe that a class II designation will make these approvals unnecessarily onerous and that it contradicts the stated objective of the Ministry of Environment and Energy to streamline, for example, the certificates of approval process. As a solution we recommend that all of these approvals be designated class I, with the discretion of the minister to upgrade them on an individual basis.

It is important to mention also that the impact of the bill on approvals required under the Crown Timber Act, the Aggregate Resources Act and others remains unknown to the industry. We have no idea what the impact of those regulations would be. I would therefore like to request the need for all regulations to be developed and released for comment prior to third reading in order for us to be able to assess the full implications of the bill.

1150

In terms of structure, the industry sees the commissioner as pivotal to the successful implementation of this bill, but we suggest that, to demonstrate the government's commitment to both the environment and the economy, the position be titled "sustainable development commissioner." This new title would also reflect the recommendations that come from the Ontario Round Table on Environment and Economy.

Aside from the title, we are concerned that the role of commissioner has not been given the authority that is required in order for it to be effective. In handling requests for investigation, for example, it would appear that the commissioner is nothing more than a collator and a distributor of paper.

Under the current draft of the bill, anyone has the right to request an investigation, provided they submit a summary of supporting evidence. Requests will flow through the commissioner's office, where they will be passed on to the appropriate minister. This could create a situation in which the government is in a constant state of response to requests for investigation, both frivolous and otherwise, and is therefore unable to conduct the business for which it has been elected.

Under the bill, the relevant minister is the only one permitted to weed out those frivolous or vexatious requests. If the commissioner were given this authority, these claims could be stopped before they were forwarded to the minister and before valuable resources were spent conducting that preliminary investigation.

In terms of litigation, our members do support the inclusion of language in the second draft of the bill which states that the new cause of action will not be in the form of a class proceeding. However, we remain concerned about investigations which do succeed in generating lawsuits, but which go on to fail in court. If a company is in compliance with all acts and regulations, it is said to have a complete defence. This does not mean, however,

that the case will not be tried.

To exacerbate matters, the bill can be interpreted so that, as a matter of course, the person who initiates the lawsuit may be relieved of the requirement to pay damages if the lawsuit is unsuccessful, despite the fact that this requirement otherwise exists in any civil proceeding. This would be inherently unfair to those targeted with frivolous accusations and should be avoided.

The court must be permitted to determine whether damages should be paid, on a case-by-case basis, in accordance with existing principles of law and equity. As an added benefit, the responsibility for damages in the event of a lawsuit would be a deterrent to those frivolous claims.

Another court-related concern involves the mandatory reporting of non-compliance versus the ability of individuals to launch a civil suit. Like all sectors, the forest industry is required to report non-compliance with existing environmental regulations. This is the law and it is designed to protect the public resource. With this process firmly entrenched, it is unnecessary to allow individuals to use that information reported as the basis of civil suits. Not only could this create a disincentive to full reporting, it could provide an unfair advantage to plaintiffs by giving them access to confidential, disclosed information.

We recommend that, at the very least, the bill be revised so that none of the information provided as a result of mandatory reporting be available or accessible to those who are launching suits and that reference to or reliance on such information not be permitted in civil suits.

We are committed to a healthy environment. We support restoration plans as an alternative to funds awarded, but under the bill, restoration plans may be ordered by the court to repair damage done. Negotiation of plans will be mandatory. However, the bill goes a step further by giving the court the authority to allow any non-party to participate in the negotiations and to appeal the decision when it has been made.

If someone has nothing to lose, will he or she negotiate in good faith? And why should they, when they are not directly involved and may wish to delay the outcome, be given a right of appeal? Further, if the negotiations fail to produce a restoration plan, the bill specifies that it will be developed by the court.

As you know, the Ontario civil court system is already significantly overburdened. Restoration plans are scientific in nature and they require knowledgeable experts for their development. As such, we recommend that the bill be revised to allow experts or expert panels to develop the plans where negotiations fail to do so.

If implemented as proposed, the bill of rights will require a commissioner and a commissioner's office; the design, implementation and maintenance of a registry; countless hours from every ministry; and despite efforts that have been made, a very large and a very intimidating process.

We are concerned about the lack of published estimates of the significant costs that will stem from this bill.

We would like to reiterate our request that an estimate be released as soon as possible so we can assess the true implications of the bill and then be able to determine our true level of support.

There are a number of other areas, but I think I've covered most of the highlights.

We still have some concerns with definitions. We heard a little bit at the previous presentation. There are a number of undefined words and phrases in the bill which could be important in the context of civil proceedings: "environment" and "harm" are two significant examples. We would recommend, for example, that the word "harm" be defined as "adverse environmental effect," and that "environment" be defined as "air, land and water," as it is in the Environmental Protection Act.

Other words and phrases of significance include "degradation," "sustainability," "ecologically sensitive areas." All have been debated at length. They continue to mean different things to different people, even those within the scientific community.

It is essential, even without agreed-upon, province-wide definitions, that the bill provide the guidance as to its own intended meaning. With clear definitions, lawsuits can be simplified. Without them, lawsuits will be prolonged.

The objectives of the bill are sound. In the United States, many jurisdictions that have implemented bills have done so based on litigation, which threatens to become a giant free-for-all. The Ontario bill is being developed to benefit the environment.

We urge you to give careful thought to some of our recommendations and to consider the impact of the bill on our industry and to work towards a bill that can protect the environment while helping to ensure sustainable development. We cannot have one unless we have the other.

Mr Tilson: Just very briefly, thank you for your presentation. I can tell you that it has had such an effect on some of us on this committee that it is becoming more and more apparent to me that this committee would be totally irresponsible, as would be the government, to proceed with this bill when delegation after delegation after delegation is coming to this committee saying such things as, "We have not had an opportunity to be consulted with."

Some delegations haven't even had an opportunity to prepare written depositions, and groups such as yours coming through with very excellent suggestions—I mean, I'm going to have to require a substantial amount of time just to digest what you've said, and to spend one day, which is coming up, on clause-by-clause, is the most preposterous thing I've heard since I've come to this place.

I find it absolutely outrageous that delegations have called me and said they're not being given an opportunity to be heard, that delegations are not given an opportunity to present presentations. There's a woman still here in the audience today who has not had an opportunity to prepare a written presentation. So I can say that, if anything, your presentation has made me even more annoyed with this

whole process, and I thank you kindly for your thoughts.

Mr Wiseman: Just on the last point, we offered to meet every day, we offered to meet weekends on this. It's just political posturing, because we offered to meet more and they refused.

Mr Tilson: Baloney, absolute baloney, and you know it.

Mr Wiseman: Since I come from an environmental protest background, I'd like to just say on their behalf that I think what exists out there now is a huge misconception in terms of what we as environmental protest groups would like to do. Now I'm here, so it's a different story.

We don't have any money or we didn't when we were out there. We don't go to court. We don't want to go to court. Before I was elected, I worked on a committee that was on a very controversial issue about putting a sewer pipe right down the middle of a very sensitive creek. Because of full disclosure of information and techniques and everything, we all signed off on it. There was no problem at the end of the day in terms of how it should be done and so on.

I hold that up as an example of what can be done when there's full disclosure of information, when there's full participation by groups and when they all work together, because I don't fundamentally think that anybody really wants to hold anything up in court but that they would like to be included in the process in an open and honest way.

Ms Rauter: If that's the case, I think by revising this bill we'll just give both sides that comfort level. Because if what you're saying is true, then I don't think those groups would have any objection to putting some of these protections in the bill.

Mr Wiseman: Just on that, though, on page 4, and maybe I'm misinterpreting this about information being available in the registry, it seems to me that what we've heard from the groups all across Ontario so far is that they believe they would be able, through the registry, through open access, to get to this information and be able to work. If I'm understanding this, there is some suggestion here about perhaps not having it as freely accessible.

Ms Rauter: No. We're suggesting that there's class I, class II and class III in the registry. Because we, as an industry, require so many thousands of certificates and licences every year, if they are put in class II and we have public hearings for all of them or have a process in place, we're going to be bogged down.

We're suggesting it would be more appropriate that these be put in class I. That still means that they would be available as part of the registry, but be very careful in what class you put all of the requests we have for licences and approvals. If you put them in class II, they can be bumped up to a class III, which is a full environmental assessment. If you put them in class I, and the minister feels, "This one is of particular importance," he still has that discretion to pump it up to class II.

So we have no problem with many of these things being in class I, but if you put them in class II, they have

the potential to be bumped up to class III, and that effectively will close us down as a resource industry. That's where our concern is coming from.

Mr Hans Daigeler (Nepean): Let me be frank, if you allow me to. I'm wondering a little whether you may be afraid of drawing the final conclusion from your own observations. On the one hand you're saying you support the principles of the bill, and I understand that, I think so do we. But at the same time you're putting forward some very serious concerns, which in my opinion would lead to the conclusion, "Let's improve the system that we have and forget about all the complications of this bill."

Several of the other groups, including the farmers who were just here, are in fact drawing this conclusion. Am I going too far in interpreting your between-the-lines comments, or are you saying, "Let's go ahead with this bill and try to make the best of it"?

Ms Rauter: If we had all the other legislation in place and all the checks and balances, I don't think you'd need an Environmental Bill of Rights. But right now I think you have a public that is very concerned about the environment. So if you decide that you do need an Environmental Bill of Rights, then we can support the objectives of it, because we think that the objectives are sound, but how you write it, how you implement it, is very critical.

I can give you an example with the Aggregate Resources Act. Where we, as an industry, could buy the principles of the Aggregate Resources Act, when we saw how the regulations were going to be implemented, they were devastating, because you could not apply them. We needed to go out and do surveys at one-foot levels if we were going to do anything in terms of getting some gravel off the side of some areas to try to build a road.

So we're concerned that if we don't see the regulations, we have no idea. In terms of the way some of the bill is written, it could be considered motherhood and you can't really be against a lot of it, but depending upon how those regulations are written, you really have the ability to shut industry down. More important, you have the ability to shut government down. That's why we're saying: Be very careful in how the bill is written. Be very careful how you put people into the various licences and approvals under this classification system, because you can put something in that's very good.

One of the things we're very supportive of is the restoration plan, as opposed to damages, if somebody goes forward. We think that's a good way to go. But be very careful (a) in the way the bill is written and (b) in terms of how those regulations are developed. I really urge you to look very carefully. We try to be positive and we'd like to think that our recommendations are positive, but we are concerned.

The Chair: We appreciate your comments, and I'm sure there'll be some discussion of them when we conduct clause-by-clause review.

The committee is adjourned until 3:30 this afternoon. I would ask all members to be here promptly so that we may begin the consideration of further presentations.

The committee recessed from 1205 to 1544.

The Vice-Chair: I'm going to call the committee to order even though we don't have a representative of the PC Party here yet. Given the scheduled time for the witness, I think we should begin, since we are late already because of a vote that we had to hold in the Legislature.

ROBERT BENNETT

The Vice-Chair: The next witness is Mr Robert Bennett. You were scheduled for 3:30. It's already a quarter to 4. You will nevertheless have 20 minutes. You can either use the 20 minutes in full or leave some time for questions and answers. Of course, that would be appreciated. Please go right ahead.

Mr Robert Bennett: Thank you, Mr Chairman. I appreciate your giving me time at this meeting. I am not too familiar with the Environmental Bill of Rights. I just happened to come across a copy that is called An Introduction to the Environmental Bill of Rights. I'm principally interested in acid rain. You have my little booklet in front of you.

I first got interested in acid rain way back before it became a popular issue with most politicians. About 1973, we in Muskoka—I come from Bracebridge—found that our fish were becoming unfit because of mercury. The then Environment minister stated that the mercury was leeching out of vats at two places, at Huntsville and Bracebridge, and going into the fish by way of food.

I had mud analysed above and below the tanneries and in eight other spots around the Muskoka lakes. It cost me at that time \$850 to have the mud analysed. I got it analysed down in Texas at the University of Texas site at Aransas Pas. That proved that the mud was the same all over. There was no difference in the mud below or above the tannery.

The next thing they said was that there was a natural leeching of mercury out of the rocks. Probably you people don't remember this. Well, I proved that wrong.

Then about 1974 or 1975, people began to talk about acid rain. A friend of mine, who was a scientist, summered in Port Carling. We did testing and I got blamed for the testing that was done in the future. For instance, on page 12 of my little booklet there, it says, "Criticism of Bob Bennett is uncalled for, his persistence probably forced public tests." The reason the Ministry of the Environment was doing tests was because we were doing them and it wanted to refute them, but it couldn't.

However, I became mayor of the township of Muskoka Lakes. I had in the meantime lost a lake of brown trout. I owned a small lake and the brown trout died. I didn't know why. I had no idea. Then on the farm the frogs started to disappear. A friend who liked to fish usually gathered two or three dozen of what we call cheerers—small frogs in the grass. At the end of 1974 he said, "I wonder what's happening to the frogs?" Then in 1975 he couldn't find any. We didn't know why, but I know now that it was because of acid rain.

The history of the Ontario government: In 1915 it passed an order in council exempting 12 townships in the Sudbury area for agricultural purposes. The reason for this was that the farmers were finding that their trees and

crops were dying. Over the years, they formed a committee called the committee for the examination of sulphur fumes, as it affects crops. This went on for quite a number of years until we began to be aware of what was happening further afield in Muskoka, Haliburton and so on. So then they formed the present environmental section in the provincial government.

I have found out that over the years, in the last 12 years, starting with about 1981, 1980, we have spent \$22 million cladding the hills in Sudbury with plants, limestone and fertilizer, and the environmental section of the Ontario government has boasted that your acid rain reduction is working, because this is proof, "We're growing trees in Sudbury now." If any of you have been to Sudbury you will see that the hills are starting to green, but if you spend \$22 million on fertilizer and limestone you can do that. This year, in 1993, we're planting 50,000 trees, and I suppose they'll have the fertilizer and limestone as well.

1550
My little booklet will tell you many things about what's happening with Inco. Two things are quite important. The Falcon Indian band started to sue Inco for damage to their trees; Inco settled out of court. Then Falconbridge was getting complaints about the citizens of Happy Valley, where there are 25 home owners. The Ontario government paid to have the homes moved, torn down, at least to get rid of the people in Happy Valley, because the acid rain and fumes were too strong for them to live there.

I want to tell you that, generally speaking, people who live in Muskoka and are working on acid rain will tell you the Americans contribute most of the acid rain to Muskoka. I'll tell you that the Americans don't contribute any acid rain to Muskoka. I'm sorry I didn't come down here prepared for this meeting—at short notice. I don't have a photostat machine, but I want to show you a little map and you can find that map in the source: Acid Precipitation in Ontario Study, annual program report for 1988 and 1989.

That map shows St Cloud, Minnesota, where they released tracers in the air. Those tracers, over 45 days, were distributed over an area from 200 to 400 kilometres. The chimneys are on the average of 500 feet. None of it got to Muskoka. It fell far short of Muskoka. The farthest it got—if you want to look up that book—was about the Lakehead of the Great Lakes.

There has been a large study done by Americans who released traces at the air force base in Dayton, Ohio, and Sudbury. Canadians must have participated in this study, because it was discovered that much of the pollution that comes from Sudbury, while dissipating throughout the atmosphere, actually travels up to 1,200 kilometres. It was discovered on the east coast of the United States.

Our environmental people, working for the Ontario government, must know about that study. In fact, Dr Tom Brydges, probably the most highly paid person in the environment in Canada, made a large study, didn't use any tracers and then at the end of the study admitted the study may have been a little flawed because he didn't use

tracers. The study has been done, the information is there, and you'll find that in my little booklet that I've given to you.

There've been a lot of studies done by Canadians; most of them are flawed. The most recent study, a young lady from the Canadian Environmental Law Association handed me a booklet here and the conclusion reached there was: "Attention has also been focused on the obvious decline of sugar maples in parts of eastern Canada," which includes Muskoka. "Studies to date suggest that the damage is due to a complex set of factors such as drought, climate, air pollutants and acidification acting in concert."

I can tell you that drought isn't killing trees in Muskoka. It will kill small trees on a ridge that's bare of much soil. But I've lived in Muskoka all my life; I'm 76 years old and I've worked in the bush, cut wood and burned wood for many, many years, and I've never seen a dead tree that was suitable for wood purposes die because of drought. We had in 1949 the worst possible infestation of army worms you could imagine. The end of the farmer's barn was covered as if there were a fur blanket on the barn. It killed a few trees on these rocky ridges where there was no soil; some people lost trees. But to say that maple trees are dying in Muskoka because of drought and for reasons other than acid rain is wrong. Acid rain is killing trees.

I bought a cord and a half of wood this fall, half of it made up of black cherry. The black cherries are going to be gone in just a few years. They seem to be all dying.

I hope I have drawn to your attention something about the problems of acid rain in Muskoka. I haven't been very popular there because I've been working on acid rain for 20 years. I gave a speech to the Muskoka chamber of commerce about acid rain and three or four of the people came up—it just happened they were hotel owners—and asked me, "What are you trying to do, kill our business?"

Well, ladies and gentlemen, the business is dying. Elgin House, our premier resort in Muskoka, is closed. Keswick House, a 400-person accommodation, is closed, and the others are getting grants from the government to keep operating. American tourists were insulted. The district council placed on windshields little pamphlets asking people to take it up with their representatives in Parliament to try and stop the acid rain coming from the States. We had friends who stayed at the Elgin House who were very well aware of Sudbury, and they took offence at two pamphlets they got and quit coming. That's one of the reasons for Elgin House closing.

I tell you in my book here that the people in the district of Muskoka thought they would get the Americans up and give them a tongue-lashing because of their acid rain. Let me quote from the Sudbury Star:

"Acid Rain View Angers Politicians of Some States.

"Bracebridge, Ontario. Some US states have reduced their sources of acid precipitation more than Ontario and don't like Canadian calls for additional curbs, US officials say. 'We started back in 1971,'" when we didn't know we had acid rain, although the big stacks started in

1972 and that's the cause of acid rain in Muskoka. To continue, "Our cutbacks are bigger than what you have accomplished...and you want us to jump through hoops for you now," Illinois state representative Edward Meyers told a special meeting with Ontario Thursday."

We didn't get those reports in our papers. We did hear prior to the meeting how our representatives were going to set them on their ear to clean up acid rain coming from the States, but we do not, in Muskoka, get acid rain from the US. Proof of it is that prior to the big chimney being built at Sudbury, the chimney there was 325 feet high, and we had virtually no acid rain in Muskoka. They built the 1,215-foot chimney, and the idea was that the solution was dilution. Well, it isn't a dilution as far as we in Muskoka are concerned.

I have some facts I'm not releasing just now about health. On the back page I mention that I did make a study of a group of homes in Muskoka. In the 20 years prior to the big stack being built, one person in my little village died of cancer. After the big stack got operating, in 20 years 11 people died of cancer. These are facts.

I guess I've taken up that 10 minutes. Are there any questions?

Mr Wiseman: You started off your presentation by indicating that you hadn't seen the Environmental Bill of Rights.

Mr Bennett: No, I haven't.

Mr Wiseman: Then let me ask the question from a different angle. In all the years you've been trying to access information in order to do the research you've done, how easy has it been, and what have been your greatest roadblocks?

1600

Mr Bennett: I've had to steal information. There's a book put out by the regional municipality of Sudbury, and it lays out the year's outputs on limestone and fertilizer. It's very difficult to get information on acid rain. There's a booklet called Acid Precipitation in Ontario Study, Annual Report, 1988-89. I was told it was out of print. I got a copy of it. I have felt, in the 20 years I have worked on acid rain, that no one in Muskoka but myself wants to do anything about it, apparently. Frank Miller, former member of Parliament and Premier I don't think has ever said a word about acid rain.

Our federal member is Stan Darling, who by the way is a pretty good friend of mine. He says he used to think the way I do, but he went up to Sudbury and the winds were blowing from the southwest to the southeast and it all goes on Quebec, so why should we worry about it? This is what I've been up against, Mr Wiseman.

Mr Wiseman: In terms of accessing information from government and getting studies, perhaps you could describe what you've tried to get and how difficult it was.

Mr Bennett: I've got piles of material from the government. Mr Darling sent me an envelope that must have weighed 20 pounds. I told you about the studies done by the Americans at St Cloud and in Akron, Ohio. They don't need to do any more studies. God knows, there have been lots of studies done, lots of money spent

on it. Mr Darling tells me the federal government alone spends \$1 billion on environmental issues and has 100,000 people.

I don't know what the Ontario government's doing, but the Ontario government does run a large organization at Dorset Research Centre. Busloads of school children come there, and three years ago I asked the lady in charge there, "Are you still telling the school children that most of the acid rain comes from the States?" "Oh, yes," I asked them again last year when I went over. "Oh, yes, it does." They have pigeonholes for all the people who work there, so I put one of these booklets in each of the pigeonholes.

I'm happy to say that the director is starting to change his tune. There was an article in the Star a week or so ago where he said that the stated objective of, I believe, allowing 18 pounds of sulphur dioxide to fall per hectare per year is not good enough; we must have half that. Half that still isn't good enough. We need the chimney down. It's an aberration. There's no point in having a chimney distributing all these poisonous gases, fumes and so on all over Ontario and harming all of Ontario.

If the chairman of Sudbury defends acid rain—I believe they put this fax sheet out. It states: "In the Muskoka-Haliburton region, for example, Ontario government studies of environmental data show that some 90% of airborne acidic chemicals come from the south. Inco's Sudbury operations are north of the region." That is absolutely wrong.

Mr Wiseman: I think you might find the bill intriguing, if you look at section 61 and the sections under the registry.

Mr Bennett: I know. I talked to the Canadian Environmental Law Association. I wanted to sue Inco. I've a lawyer who calls himself a litigation lawyer; he's smart, but he doesn't know anything about environmental.

Mr Bernard Grandmaitre (Ottawa East): I'd like to pursue The Acid Rain Story claiming that Canada produces more acid rain than the United States. I'm quoting from page 13 of your book; it's not your quote, it's from The Acid Rain Story, Environment Canada. "Smelter SO₂ emissions yearly: United States 1,400,000 tonnes, Canada 2,125,000 tonnes."

Mr Bennett: Yes. This is from the smelter emissions only. We do produce more from smelters than the Americans. They produce considerably more from coal-burning institutions than we do, much larger, all over the States. By the way, they're far ahead of us in trying to clean up. Many of the chimneys down on the border have scrubbers on them.

I visited a scrubber last winter in Arizona, and while I was there they punched a button and showed that in the previous 30 days they had taken out 92.3% of the pollution. The trees around were green. The stream had fish in it. They do it, and we sit back and hope that our governments will do something similar.

There are little stories there, one-line stuff. I mention Phelps Dodge smelter, shut down in Douglas, Arizona, by threats of a class action suit by the townspeople.

Perhaps we'll be able to do something now with this

new environmental act, but we haven't been able to sue Inco because they're acting under licence. The Ontario government sets the limits on their licence. You have to sue the Ontario government.

The Vice-Chair: Thank you very much.

Mr Bennett: Is that it?

The Vice-Chair: Yes, I'm sorry. Your time is up, and we do have other presentations. We thank you for your presentation, and if you should have further comments on Bill 26, we can still receive written comments as well. If you'd like to pass those on to the clerk, we'd also take those into consideration.

Mr Bennett: Mr Chairman, looking at the introduction to the Environmental Bill of Rights, I don't see anything there for acid rain.

The Vice-Chair: As I say, if you wish to submit further comments, and perhaps the parliamentary assistant or anybody else from the government might want to give you further information, there is still time to submit something in writing if you wish to; you don't have to. Thank you for appearing before the committee.

PICKERING AJAX CITIZENS TOGETHER
FOR THE ENVIRONMENT

The Vice-Chair: The next group scheduled to appear is the Pickering Ajax Citizens Together for the Environment, PACT.

Mr Bill Parish: My name is Bill Parish. I'm a past president of PACT; with me is David Steele, who is a vice-president. I think you all have our little brief; the clerk of the committee very kindly distributed it to you this morning.

I want to thank the committee for hearing us. I'll skip the background part about us, just to save time so there's maximum time for presentation and questions.

We have general comments on the bill and specific comments. If we'd had more time, we would have prepared more specific comments, but we realized the time was short and we thought we'd get some in at the present time.

Our general comments are these: PACT strongly supports the ideals expressed in the preamble to the bill. However, PACT has a great many concerns about this bill, both in its terms and in its processes.

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In our environmental experience fighting dumps in Pickering and Ajax, PACT has found that one of the major problems for the people in striving to achieve a clean, healthful environment is government, at all levels. No matter which political party is in power, the government of Ontario acts as if it has the divine right to proceed environmentally as it wishes, regardless of the law and the people. Let me quote some examples, and this is all in our experience.

First, in 1987 Metro Toronto and the provincial government attempted to avoid the Environmental Assessment Act when Metro Toronto sought to open the Brock South dump in Ajax.

Second, in 1989 Metro Toronto, the region of Durham and the provincial government attempted to avoid the

EAA process to force the P1 dump on to the people of Pickering.

Third, in 1991 the provincial government imposed the IWA on the people and again ignored the input of the people and the full processes of the EAA.

Fourth, with respect to the Brock West dump, which we've lived with for some 19 years in Pickering, it is clearly evident from PACT's research that—I'm just quoting six things here; actually, this was the foundation of an 18-page letter with 46 questions to the minister.

First, and these are direct quotes, "The volume capacity and contours of the site appear to have been altered, enlarged or extended beyond that approved in the original certificate of approval dated August 28, 1973. This alteration, enlargement and extension has occurred without any hearing, although a hearing appears to be required by the Environmental Protection Act."

Second, "The site has been overbuilt beyond the contours prescribed in the original 1973 certificate, and, indeed, beyond the contours laid out in Metro plans 1670-1706 and 1670-1707, which, Pickering has only recently discovered, have been incorporated into the certificate since February 5, 1980. This alteration, enlargement and extension has occurred without any hearing under the Environmental Protection Act."

Third, "This overbuilding has occurred without Metropolitan Toronto or the ministry conducting any studies of its environmental impact, including its impact on the site's leachate collection system, gas collection system or liner."

Fourth, "This site was originally designed to accept about eight million tonnes of waste, for a total volume capacity of waste and fill of about 18.5 million cubic yards. It now contains over 16 million tonnes of waste and is intended to occupy over 26 million cubic yards."

Fifth, "Metro's reports indicate that the leachate collection system may already have collapsed, that a leachate mound of about 80 feet has been measured, that a contaminant plume has migrated offsite and that the level of contamination exceeds the reasonable use guidelines."

Sixth, "Metropolitan Toronto nevertheless continues to overbuild the site, apparently with the blessing of the ministry."

Consequently, PACT's concerns about the bill are:

With respect to Brock West, will Bill 26 help the people to require the Ministry of Environment and Energy and Metro Toronto to obey the government's own laws and regulations and to close Brock West immediately? If so, how?

With respect to the IWA and Bill 143, will Bill 26 help the people to change this process into one that is fair, open and democratic and that places a safe, healthful environment above all? If so, how?

With respect to future landfill site searches, will Bill 26 ensure that such searches will be open, democratic, fair and controlled by the people so that the environmentally safest site will be the one chosen? If so, how does the bill provide that?

Lastly, why doesn't Bill 26 set up mechanisms to ensure that the ministries of the government must see that their own environmental laws and regulations are obeyed? It's pretty frustrating when you find that governments don't have to obey their own laws and regulations at any level. That's our principal concern here.

In our specific comments on the bill, we think you should add two more purposes: to recognize the inherent value of the natural environment to the people by the means provided in this act and by all other lawful means, and, secondly—and we think this is the most important purpose of all—to ensure that the people of Ontario have all the means to achieve, in an effective, timely, open, fair and democratic manner, the common goal of the protection, conservation and restoration of the natural environment for the benefit of present and future generations by the means provided in this act and by all other lawful means.

We think that subsection 2(1) should be changed. After the words "by the means provided in this act," the words "and by other lawful means" should be added. We're a little frightened that if you can only go "by the means provided in this act," it may restrict the freedom of the citizen and the right of the citizen to use any other lawful means. We're just a little wary of that kind of wording, that it may indeed hurt us, and we're asking for those words to be added.

In part II, public participation in government decision-making, PACT is concerned that the statements of environmental values of each ministry have not been published.

This bill was brought into the Legislature for first reading on May 31. It's incredible, in our view, that those ministerial statements of environmental values have not been published and are not brought forward for public hearings at this time. They should be here.

PACT supports open, fair, honest, meaningful public participation in government decision-making. The people must be involved from the very beginning and must be truly consulted, and by "truly consulted" we mean we're listened to, we're not brought in on a pro forma basis: "Okay, we've listened to those guys; now we'll do what we want." We've been subjected to quite a bit of that. No reflection on this committee, but we've been subjected to that kind of treatment in the past.

PACT sees the wording of section 11 as very weak. What does "every reasonable step" mean? What are the "decisions that might significantly affect the environment"? These words give the minister so much room to vacillate, to do nothing and to act contrary to the best interests of the environment and the people.

PACT recommends that Bill 26 provide that any person may appeal to the Environmental Commissioner if the minister is shown to be acting contrary to the intent and purposes of this bill or any other environmental laws and regulations and that the minister must respond to the appeal at a public hearing within 14 days.

Section 15 gives the minister too much discretionary power. PACT recommends the same appeal process as in our paragraph 3.2.4 above.

As far as the Environmental Commissioner is concerned, part III, PACT regrets that the Environmental Commissioner lacks the powers to effectively protect the environment and to assist the people to achieve a healthful environment. We don't see him as anything more than a report writer. PACT recommends that the Environmental Commissioner be empowered to hear appeals from citizens where any citizen shows that the minister is not acting to protect the environment, as defined in Bill 26, and that the Environmental Commissioner be empowered to hear appeals from citizens where a citizen shows that any Ontario environmental law or regulation has been violated.

Part IV, application for review: Again in this part, PACT finds that far too much discretionary power is left with the minister, with no provision for appeals or remedial action. PACT recommends that a citizen be permitted to appeal to the Environmental Commissioner any decisions made by the minister in sections 69, 70 and 71 and that within 14 days from the receipt of the appeal the Environmental Commissioner must hold a public hearing to hear the appeal.

Application for investigation: PACT recommends that a citizen be permitted to appeal to the Environmental Commissioner any decisions made by the minister in sections 77 and 78 and that within 14 days from the receipt of the appeal the Environmental Commissioner must hold a public hearing to hear the appeal.

Part VI, the right to sue: Subsection 84(8) places the onus of proof of a contravention on the citizen. How could any citizen or non-governmental environmental organization afford to take on the government of Ontario? The legal costs and the costs of technical experts in an adversarial situation could bankrupt a citizen or an NGO.

This part is a clear admission that the government recognizes that the Ministry of Environment has failed and is failing to enforce the environmental laws and regulations in Ontario. PACT recommends that to assist citizens in their attempts to achieve the purposes of Bill 26 an intervenor funding clause be added, such clause to provide that intervenor funding pay at least 50% of any court action.

I've gone over my time a little bit, Mr Chairman, but I'll conclude there.

The Vice-Chair: No, that's fine. Thank you very much for your presentation.

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Mr Grandmaître: I'd like to follow up on intervenor funding because, as you know, some four years ago intervenor funding was started to help people or groups such as yours, not to fight the government, but to work out your differences. Are you telling me that in Bill 26, even if it's not mentioned—maybe I should be addressing my question to the parliamentary assistant. Is the intervenor funding—let's call it "program"—in the province of Ontario excluded from Bill 26 or included in Bill 26?

The Vice-Chair: This is actually your time, but would you permit a response?

Mr Parish: Yes, certainly.

Mr Shaw: The intervenor funding is not included under Bill 26.

Mr Grandmaître: Excluded?

Mr Shaw: It's excluded.

Mr Grandmaître: Can I ask why? On your behalf.

Mr Parish: Yes, thank you.

Mr Grandmaître: Why?

Mr Shaw: To answer that question, I think you have to go back and look at the derivation of the bill. The bill, as has been spoken to before, is a result of consensus developed by a task force and public input to that task force and supplementary recommendations. The bill that has been brought forward in the legislation basically is a reflection of that position. The task force did not see fit to include provisions for funding underneath this bill at the time they created it and none have been included since that time.

Mr Grandmaître: That's it.

Mr David Johnson: I agree with your statement that the ministerial statement should be here and should be part of the public process. A number of other groups have indicated that same fact.

You posed a question and maybe on your behalf I'll pose it to the staff over here so we can both get an answer. I think the question, when I was coming in, was that this environmental bill is in place and how does it impact on existing landfill sites such as Brock West, for example? You have some concerns about Brock West. How does it impact upon new landfill sites? How does it impact upon the IWA process? It seems to me we've discussed this in the past, but there isn't a clear message. I wonder if you could give us the full gamut of how this bill is going to impact on all aspects of landfill, including the IWA.

Mr Shaw: If I may break the question down and start with existing landfill sites which already have a certificate of approval, what the bill provides for is for any two residents to request a review of that certificate of approval. The bill also provides for a request for an investigation if there is belief that the certificate of approval has been contravened with respect to a new waste disposal site or landfill.

It's hard to generalize, but if we are talking about a major waste disposal site for a municipality for solid waste disposal, because the approval mechanism for such sites is underneath the Environmental Assessment Act and the Environmental Assessment Act contains provisions for public participation in it, then there is not a duplication under the Environmental Bill of Rights and the process proceeds only under the Environmental Assessment Act.

The Vice-Chair: Mr Wiseman.

Mr Parish: May I just respond to that answer? No?

The Vice-Chair: Okay.

Mr Parish: Here you have a situation: If you're going to go to the Environmental Commissioner to go to the Ministry of Environment because a certificate of approval is being violated, you're playing bureaucratic games. Why can you not go directly to the minister responsible

for issuing the certificate of approval and get an answer from him? I think it just makes a citizen more frustrated. How does the bill help us? That's the question. We should be able to go to the minister and if the certificate of approval's being violated, the minister should put it right or hold a public hearing or some other thing, but it should not have to go from one to another to another. I don't think the people are served by that kind of duplication.

The Vice-Chair: Mr Wiseman, do you want a quick question?

Mr Wiseman: Yes. I guess my question really is, if we go back to the 1980 changes that were done to the certificate of approval to eliminate the Liverpool Road bypass through Brock West and the infilling that took place there, that was all done pretty quietly. I'd just like to have a comment from perhaps counsel or the parliamentary assistant about how the registry would have played in a situation where there was an attempt to change the certificate of approval.

The Vice-Chair: Again very quickly. We are already behind time.

Mr Shaw: There was a proposed amendment or change to an existing certificate of approval, and if it did not require a hearing under the Environmental Assessment Act, then there would be a requirement for notice on the public registry.

Mr Wiseman: So the public would be notified through the registry.

Mr Shaw: That's correct.

The Vice-Chair: Thank you, Mr Parish and Mr Steele, for appearing before the committee and for submitting your brief, which I'm sure is going to be useful to the committee. Unfortunately, the time is very short but I think you understand that there are a number of people, obviously, who want to appear before the committee. So thank you and we appreciate your presence.

BRUCE PENINSULA ENVIRONMENT GROUP

The Vice-Chair: The next presenter is the Bruce Peninsula Environment Group, Siegfried Kleinau. I think you're familiar with the process. It's 20 minutes, and if you want to leave some time for questions and answers, we'd appreciate that.

Mr Siegfried Kleinau: Thank you very much, Mr Chairman, members of the committee, for a chance to make this presentation. My name is Siegfried Kleinau, better known as Ziggy. That's what everybody calls me. Some call me worse than that.

We've been involved in this process, trying to work out the best way of addressing all the problems in the environment. Our group had a few meetings on it with a lot of input, but it has been kind of put in a certain context in the report that I would like to present.

The environment is the basis of life. The air we breathe, the water we drink, the soil that grows our food, if any of it is contaminated, life suffers. The longer the contamination exists, the more living species will be affected by way of the graduated food chain.

We couldn't have said it any better than Environment Canada. In their fact sheet on water, which was released in 1989 under the title *Clean Water: A Priceless Asset*, they say that water is the lifeblood of the environment, essential to the survival of all living things, plant, animal and human, and we must do everything possible to maintain its quality for today and the future.

We have witnessed death and destruction in the animal world. We are seeing human immune systems breaking down under the stress of coping with a polluted environment. There is hardly a person to be found who is not suffering from one allergy or another. Especially children show many forms of environmentally induced allergies.

We need to defend our right to a clean environment. Therefore the Bruce Peninsula Environment Group is fully supportive of a speedy introduction of Bill 26.

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Realizing the need to protect the health of all peoples, we would like to see this reflected in the categorical approach to the measures taken. Firstly, in the preamble, we recommend changing the word "healthful" to "health-giving" to fully underline the reason for strong environmental protections. Just as important, we urge the committee to remove from all clauses of the act all limitations, like "unreasonable" threat or "significant" effect on the environment. There is just too much leeway given for interpreting these restrictions. Make this law a strong, explicit one. Don't weaken it right at its inception.

In part II, sections 5 and 6, there is only a brief reference given to the establishment of an environmental registry. As this, in our opinion, is the pivotal point for the public to obtain all information and enable residents to participate effectively, it is paramount that this institution be given the status it deserves.

Therefore, a fully qualified registrar should be appointed under the Public Service Act to administer the registry, and this should be written into the bill. This registry should be set up to afford the easiest access possible to any resident of Ontario. It should receive the latest updated information from all the ministries.

In regard to sections 19 to 48 of part II, we would like to refer to a statement made by the Task Force on the Environmental Bill of Rights in its report released July 1992, where it states on page 71: "The task force does not wish to encourage the development of overly formalized 'bureaucratic' processes that discourage rather than facilitate investigations."

These above-named sections have been especially expanded from the original draft in such a cumbersome way that its original intent has been lost in bureaucratese. Outline the main directives only.

In other respects, we find that the ministers are given too much flexibility in making decisions by overriding stipulated rules.

Part III envisions the installation of an Environmental Commissioner. His or her office is the key to enforcing the statutes of this vital bill. Therefore, we find that the commissioner should be an especially elected member of the Legislature—not appointed—to be more accountable. He or she should be next in line only to the Premier of

Ontario. The commissioner should also have the same powers as the Provincial Auditor, with full access to all ministries' dealings and documents under the act.

The commissioner should also have the duty to make public all contraventions of the act by personnel of ministries and recommend suitable action against these contraveners.

Regarding part VI: As this part of the act gives persons the right to sue to prevent or rectify environmental harm to a public resource and court action is being used only as a last resort, it would seem logical that under the circumstances, plaintiffs should not carry the cost of these actions on the public's behalf. We urge, therefore, that intervenor funding be made an explicit part of the act to ensure that environmental concerns are fairly represented.

We see a problem in the judiciary dealing with an increase in the number of environmental damage cases. There is not enough expertise regarding the different aspects of the workings of our natural environment to ensure a competent hearing. A special branch of the court system should be created, with the appointed judges receiving special instruction geared to environmental knowledge.

We strongly recommend a toll-free calling system for people reporting environmental contraventions, naming it the environmental crime-stoppers line. There should also be a free legal advisory service specified in the act.

We welcome the protection the act gives employees concerned about harmful practices in industry, but feel it could be strengthened.

Last but not least, let us stress one point: A law is only as good as its enforcement. We have seen it for decades now in the federal jurisdiction: thousands of warnings issued, a few court cases, but only a handful of convictions. This doesn't send the right signal to polluters. Strong enforcement entails a well-trained, well-funded investigation branch, no-nonsense prosecution and a dedication to protect our all-important health-giving environment.

With that, I thank you very much for the opportunity to make this presentation.

Mr David Johnson: Well, Ziggy, I appreciate your presentation and deputation. It's going to be very helpful to us. I must say that the comment with regard to the court system being able to handle the cases and having the expertise to handle the cases is an issue that's been raised before and I suspect you've put your finger on something that very much will need to be looked at when this is implemented.

I just wondered, however, since your group has been in operation since 1989 and has a number of members, I assume—I don't know exactly how many—in your experience and your group's experience, what sorts of environmental problems—perhaps if you could tell us the kinds of issues that you've seen in those years specifically about which you think this bill might be helpful to you.

Mr Kleinau: We have looked, especially because we're a peninsula, at the water pollution and regarding especially the human waste, farm waste and also the

pollution that is coming out of the Bruce nuclear plant, which is not on the peninsula but not too far down the shore from our region. Besides that, we know that any kind of chemical pollution will eventually get airborne out of the water and will come down on the land and contaminate crops and the feed that livestock eat. In other words, it will get into our food chain.

Mr David Johnson: You mentioned farm waste in there. Could you be specific as to how you feel your group might use this bill against whatever form of farm waste you think there is?

Mr Kleinau: I know that there's been a strong lobby by the farmers' organizations not to have too much intervention by Bill 26 into the farming operation. It's been mentioned in several parts here that—I forget now the specific name of the farm act that seems to supersede a number of matters that could be brought up as environmental harm. But I would think if the government put more emphasis on the organic way of farming, it definitely would help as far as the contamination of water is concerned.

Mrs Mathysen: Thank you for coming and presenting to us, Mr Kleinau. I see you have two concerns here and I'm wondering if representatives from the ministry, through the parliamentary assistant, might address these specific concerns. One was with the registry, and we had a quite extensive description of how that registry would function and how it would provide information, and secondly, the independence and accountability of the commissioner. Could the parliamentary assistant or the ministry staff through him explain specifically those two areas and perhaps ease some of Mr Kleinau's concerns?

Mr Shaw: The envisioned access to the electronic registry at this time will be by a variety of means. It could be from a modem at a home computer. It could be by any of the existing networks and probably through major public libraries. It will be accessible, if you're using a home computer, through a 1-800 number dial-in, so there'll be no charge to go into the registry itself. The intent is to be able to reach as many people as possible with the registry.

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Mr Kleinau: When you're talking about major public libraries, how far would we, for instance, have to travel to access the registry then?

Interjection: Wiarton.

Mr Kleinau: We have small libraries in Tobermory and Lion's Head. The first one that is slightly major would be Wiarton, which is about an hour's drive from the top of the peninsula.

Mr Shaw: I'm not in a position to answer your question specifically. I could tell you it would be approximately 200 libraries across the province.

The Vice-Chair: Any further questions? Mr Grandmaître.

Mr Grandmaître: Yes, just one question. I know that you've been very interested in the Niagara Escarpment Commission for the last number of years. I remember, as Minister of Municipal Affairs, receiving letters from you. Do you think that Bill 26 will help your group and other

groups that are dead opposed to this commission? Do you think Bill 26 will be a useful tool?

Mr Kleinau: I really would like to have more public access shown in this bill. That would definitely be a big help.

As far as the NEC is concerned, there are a lot of different attitudes. If you remember that a lot of people have lived there for the length of their lives and all of a sudden they find themselves under the NEC, they are certainly not happy as far as the provisions are concerned. But then we have a very distinctive member of the community up there by the name of Maitland Warder. He's a commissioner on the NEC and his whole life has been spent up there and he's very supportive of what the NEC is doing. In other words, I can't really say one way or another how this bill is going to affect people who might have concerns against the NEC.

Mr Grandmaître: Or even protect you from the decisions of the NEC.

Mr Kleinau: As far as I'm concerned, there's always controversy in everything. This bill might open up a way of addressing it. I'm not 100% sure, so that's all I can say to that.

Mr Grandmaître: Would you like to see the NEC disbanded, giving these responsibilities back to the 27 or 29 communities involved on the—

Mr Kleinau: No, I definitely wouldn't.

Mr Grandmaître: Very good. Thank you.

The Vice-Chair: Thank you very much, Mr Kleinau, for your presentation. We appreciate your appearance before the committee and I'm sure we'll take your comments into careful consideration.

Mr Kleinau: Thank you. I recommend this as reading for anybody because it really opens everybody's eyes. A fact sheet—

The Vice-Chair: If you want to leave it with some of the members, you're free to do so.

Mr Kleinau: Yes, I could leave that with the clerk, if possible.

The Vice-Chair: You can give it to the clerk, yes.

WILDLANDS LEAGUE

The Vice-Chair: The next presenter is the Wildlands League, Tim Gray. Please have a seat. You have 20 minutes, and if you would leave some time for questions and answers, we'd appreciate it. Perhaps you'd like to go right ahead because we are already a little bit behind time, as you realize, because you were scheduled at 4:30.

Mr Tim Gray: My name's Tim Gray. I'm the executive director of the Wildlands League, which is the Ontario chapter of the Canadian Parks and Wilderness Society. We have 15,000 members nationally and approximately 7,000 members and supporters in Ontario. The area we work in is forest policy, protected areas, and to a lesser extent fisheries and wetlands.

I've been involved, personally, with a number of issues that I think the Environmental Bill of Rights will have impact on in various areas. I've acted as co-chair of the Forest for Tomorrow coalition, which is involved in the class environmental assessment and timber management.

I also sit on the Old Growth Policy Advisory Committee in the Ministry of Natural Resources, as well as being involved in other advisory committees mainly with the Ministry of Natural Resources.

The Wildlands League supports the Environmental Bill of Rights and recommends it be given third reading and royal assent as quickly as possible. The league particularly supports the four main thrusts of the bill: (1) increased public participation in environmental decision-making by government; (2) enhanced governmental accountability for its environmental decision-making; (3) creation of the right to request investigations of suspected environmental offenses; (4) Enhanced ability for members of the public to appeal certain approvals and to go to court to protect public resources against environmental harm.

I think taken together the various EBR tools will provide an effective framework for the Wildlands League and other conservation groups to advance an environmental agenda respecting the protection and conservation of Ontario's natural resources.

As I have previously indicated, the Wildlands League supports the Environmental Bill of Rights, and we look forward to using it as sustainable resource management policies and practices are developed and implemented in Ontario. However, there are six provisions of the EBR that the league would like, in hindsight, and are desirable suggested amendments to strengthen the bill.

First, in the preamble and purposes section of the bill, we generally support it, and we specifically support the principles in subsection 2(2), paragraphs 1 to 5, the ones that refer to biodiversity, protection of natural resources, wise management of natural resources and protection of ecologically sensitive areas.

We would also recommend, however, that the phrase, "by the means provided in this act" be deleted from clauses 2(1)(a), (b) and (c), because we believe it unnecessarily dilutes the otherwise strong language that's found in this section.

The second point is that we support the statement of environmental values. We think perhaps the drafts that are put together by a ministry such as MNR should have a longer comment period than the 30 days suggested and in fact should be increased to 60 as a minimum.

Part II, public participation in decision-making: We support this regime that's established in Part II of the proposed bill and we're very happy that the two ministries we most often work with, the Ministry of Natural Resources and the Ministry of Northern Development and Mines, will be caught within section 15; that is, the notice and comment on proposed acts and policies.

It's also true, from what we can understand, that maybe the acts and statutes these ministries operate under will be caught by section 16, notice and comment on proposed regulation, and also by their operating instruments under section 22. However, the league feels that the draft EBR regulation allows too much time before these ministries come underneath the provisions of the bill, some of them not to be phased in until 1995 or 1996.

We would suggest that the time frame be moved

forward and that there is no real reason why both the Ministry of Northern Development and Mines and the Ministry of Natural Resources couldn't come underneath the provisions of the EBR at a much earlier date.

Part III, Environmental Commissioner: We support the creation of an independent environmental watchdog and believe the Environmental Commissioner will provide an important and an efficient mechanism to review and report on environmental mismanagement by government.

Part IV, request for review: The Wildlands League sees this part as a particularly valuable tool to cause review of existing laws, policies, regulation and instruments that are obsolete or inadequate to protect the environment. From our experience, policies such as the 1972 forest production policy, the 1964 Crown Timber Act, and the parks act which was last amended in the 1950s, I feel all of these are either policies or acts that could fall underneath the review sections of the Environmental Bill of Rights, and we would use them.

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In addition, we believe that part IV will cause a review of the need for new laws, policies and regulations where they don't exist presently. In some of the areas that we're working on now, we feel there is a need to push for new acts or new policies, such as old growth forest, wildlife or biodiversity.

Section 6, the right to sue: The Wildlands League supports this new cause of action since it will provide an important tool of last resort to protect public resources, like crown timber, watercourses, lands, parks etc. We have had experience where we have been unable to use the existing policy framework, the existing appeal process to seek recourse for environmental damage that's been done to public lands. I think having a tool that is there, that both industry and the bureaucracy realize we have legal recourse to as a final end point, could be very advantageous to us.

Due to cost considerations, the lack of funding under the bill, we don't foresee a flood of litigation under this section, but I think it definitely should be available when, as I said, non-judicial attempts to protect resources have failed.

We're pleased that a number of key resource management statutes, ie, the Aggregate Resources Act, Crown Timber Act, Endangered Species Act, Game and Fish Act, fisheries act and the Provincial Parks Act, will be underneath the Environmental Bill of Rights and can trigger a new cause for action if either the crown or industry is found to be in violation of these acts.

I'd like to thank the committee for the chance to present in support of Bill 26, and I'm more than happy to respond to any question.

Mr Wiseman: Thank you for your presentation. We were getting a somewhat mixed array of messages on this bill. I would like you to expand perhaps on that last comment you made about litigation, because we have heard from private sector companies that think they're going to be litigated to death, and that this is going to be a recycling of litigation and that every chance they get under section 61, groups are going to apply for certificate

of approval reviews, and it's just going to go on, and on and on for ever. That's pretty much what we've heard from perhaps the mining sector, the forestry sector and the waste management sector. Could you comment on that?

Mr Gray: I can't comment from their perspective, but I don't think it's really realistic to assume that this bill is going to result in a flood of litigation. Litigation isn't easy for anybody, including groups that are trying to push a particular position, and I think the rest of the bill that carefully details how we can streamline and standardize the public review and public consultation process is going to help avoid that.

I think the advantage will be that concerns that have been voiced by a large number of people or by individuals or organizations that have been involved for a long period of time will be taken perhaps more seriously than they currently are, because I think under the case of serious violations of crown resources, right now there is the awareness by both industry and by government that we, as the public, really have no recourse, and that they can be pushed to the wall and there's not really anything we can do if we can't get a review or the damage undone or stopped through political or policy avenues. This provides, I think, a last resort, but I don't think people are going to preferentially choose litigation.

Mr Grandmaitre: Are you disappointed that this bill, Bill 26, does not include the possibility of intervenor funding?

Mr Gray: I hadn't actually really thought about that too much, because we have had some intervenor funding through the environmental assessment process. I think it's worth considering the idea that if we've got to the stage where public organizations felt that they needed to take a particular issue through the legal route beyond the public consultation and review stage, then that could make the whole process much easier for groups to do that, because one of the barriers of litigation of course is the cost. So it would make that stage of the process, I think, more user-friendly for the public.

Mr Grandmaitre: But you're not too concerned if it's not included.

Mr Gray: I'd still support the bill without it.

Mr David Johnson: In terms of the litigation, to get back to that again, one aspect is the volume: the flood or the non-flood or less than flood. The other aspect that was expressed by the previous deputant and by other deputants we've heard is the expertise of the judges, I guess, in the system to deal with these kinds of issues, that they may not indeed have that kind of expertise and some people are a little bit concerned with what sort of judgements they may make based on a lack of expertise. I wonder if you'd comment on that.

Mr Gray: It's definitely a concern. We don't want to see resource policy being decided on necessarily by the judiciary. They quite often do not have the training in the issues being discussed. But if there is a clear violation of an existing act that was written to protect crown resources and it can be shown that both the public review process and the political route were unable to resolve that

and there is a clear violation of an existing act, I think it's important that we have the ability to go that route. Even if it is perhaps with a particular government a political issue that it would prefer to keep doing things in the way they've been done and violating one of the statutes in the province, I think we should have the ability to challenge that.

Mr David Johnson: I was just curious. If this had been in place a couple of years ago, the Environmental Bill of Rights, how would your group have used the bill over that period of time?

Mr Gray: I don't know if we actually would have ever got to a litigation stage with the bill, but I think the other components of it, the review aspects and the streamlining of the public participation, could have resulted in some of our concerns being taken more seriously by the agencies responsible for resource management decisions.

As you know, there are varying levels of public participation between ministries and some are better than others at having their own processes in place. The Ministry of Northern Development and Mines has a very limited public participation process and having the aspects of the bill that will provide for that in place would have helped us in dealing with that ministry to quite a large degree.

I also think some of the provisions on the legal side and some of the provisions in the Crown Timber Act for sustainable harvest of crown forest could have been used by our organization to push for sustainable harvest of Ontario's forests. I think if both the Ministry of Natural Resources and the forest industry were aware of the possibility of litigation to force compliance with that act, they might take its provisions more seriously.

The Vice-Chair: Thank you very much for your presentation. We appreciate your presence.

ASSOCIATION OF CONSERVATION AUTHORITIES OF ONTARIO

The Vice-Chair: The next presenter is the Association of Conservation Authorities of Ontario, Jill McCall, executive director. I'm sorry, Richard Turkheim is the executive director and Jill McCall I think is accompanying him.

Mr Richard Turkheim: Thank you, Mr Chair. The hour's late.

The Vice-Chair: You have 20 minutes.

Mr Turkheim: The presentation is brief, and the presentation will not get into a dissection or a clause-by-clause of the bill. We want to talk more broadly and generally about the context of this bill. We're pleased to be here to meet with you this afternoon with regard to Bill 26.

First point: Ontario's conservation authorities fully support the intent of this legislation: to protect, to conserve and to restore the integrity of the environment. These are the very values that the conservation authority movement has been promoting and advocating for over a half-century in this province.

Ontario's 38 conservation authorities have consistently recognized the need for and the value of maximizing

public participation in and scrutiny of decisions related to the planning and the management of natural resources in our watershed. This is a direct outgrowth of our parentage and our municipally styled decision-making processes. All but the most routine decisions are made by conservation authority boards of the people's representatives, the same boards that review on a regular basis even the routine decisions of authority officers.

1700

The style, the openness and the full public and financial accountability of our decision-making in the public interest are fundamental traits of conservation authorities and our movement. It indeed gives rise to and forms the basis upon which we can provide support to the intent of the proposed bill.

However, these same traits of ours also cause us to question the need for and the cost-effectiveness of the Environmental Bill of Rights, especially within the current fiscal climate of this province, a negative fiscal climate that is indeed, on many other accounts, jeopardizing other forms of provincial support for the environment.

The ACAO supports the intent of the Environmental Bill of Rights and its underpinning principles, particularly the people's right to a healthy environment, to be informed, to be heard, to request a review, to initiate an investigation, to take action and to blow the whistle. Those are valid things.

However, we question the ultimate successfulness of this type of legislation in meeting the positive goals of this province for the environment. We are all well aware of a new language that has been developing in the field of natural resources management, a new language that centres on new words such as "proactive," "partnerships," "ecosystem approach," "sustainable development" and "conservation of biodiversity."

All of these words have been used to describe a new field of thinking or a new way of looking at things, to acknowledge that everything is related to everything else, in the words of Crombie, or to acknowledge, in the name of another renowned conservationist, that there is no such thing as a way.

We question, though, whether this type of legislation is the most effective way to deal with the tenets of this new philosophy and the new language. We question whether the Environmental Bill of Rights advances the cause of sustainable development, because we do view this bill, and perhaps we're wrong in this view, as in fact working in the direction of and trying to augur and provide greater support to sustainable development, that being an overall provincial objective.

We ask that question because in our view the bill could perhaps inadvertently perpetuate the myth of the environment versus the economy, pitting the two against each other as if they were adversaries, when in fact the environment and the economy must work to achieve complementary goals. We're also concerned that the proposed legislation focuses more on policing and pollution control and in fact placing the environment into protective custody than on better planning and more proactive measures to ensure that environmental values

are brought into the mainstream of economic decision-making. That's a concern.

Further, the legislation seems to be more reactive than proactive, by putting specific mechanisms in place to deal with decisions after the fact or by encouraging reactions to, as opposed to the prevention of, incidents of pollution. The end result, we fear, is that the legislation, as proposed, does little if anything to promote increased awareness of, education about and valuation of the environment as our basic capital asset upon which the prosperity of this province has been built and upon which it will continue to be built.

This legislation could engender a lot more process without accomplishing much increased benefit for the environment and the public. As very open, democratic and accountable watershed management agencies, we face continually reduced provincial funding for delivery of our environmental programs. Lack of assurance to this point in time that the Environmental Bill of Rights will not further consume operating capital in critically short supply causes us concern.

As you will remember, earlier this year conservation authorities' operating grants for environmental programs were cut by 22%. At a time when we are significantly reducing costs, we question the need to add more costly process. Many of our clients are already concerned with the amount of time taken to process applications and would not welcome further delays that this process could cause.

We would strongly encourage the architects of the proposed legislation to ensure that this legislation is more visionary than reactive. We can go back to the seven points of principle upon which it is based. Three are proactive; four strike me as reactionary.

The worst-case scenario is that the many publics we commonly serve will view the proposed Environmental Bill of Rights as yet another example of the piecemeal approach to environmental protection and planning. As a province, we have over the years created a tangled maze of approvals that many people see as inefficient and ineffective in protecting the very resources and the natural systems we seek to safeguard. No doubt many of you are familiar with that kind of diagram that the conservation authorities have placed before all members in the House.

Since our formation, conservation authorities have been key players in natural resources planning, management and protection in Ontario; it is our legislated mandate. We have witnessed at first hand many of the serious problems that exist as a result of the way responsibilities for management of our environment are currently parcelled out among agencies. As we've pointed out in our Blueprint For Success, whence that diagram comes, we have to stop introducing ad hoc pieces of legislation that only confuse an already complex regulatory framework.

In our work at the local level in Ontario's watersheds, we consistently help many clients on a daily basis who are struggling to work through the maze of agencies and legislation in order to find logical ways, simpler ways,

more cost-efficient ways, to better manage and enhance the resources of our watersheds. Our clients' most fundamental problem is that with so many players involved there is never anyone who will take full responsibility for any decision.

If, working together, we are to achieve greater levels of sustainable development in Ontario, we must move to an ecosystem-based approach to planning and development that would better prevent many of the problems that the Environmental Bill of Rights is attempting to address after the fact.

We need to move to an approach that better integrates upfront, not after the fact, and we need to move to an approach that is more inclusionary of many parties' different valuations of and positions on the environment and development, not an approach that tends to celebrate and vaunt such differences after the fact.

Whatever we do as a province, we need to seriously address citizens' concerns about layer upon layer of new legislation. We need to undertake a comprehensive review of the legislation currently in place and the agencies involved, to reduce the overlap and the duplication and to allow for more comprehensive and participatory environmental management to occur in this province.

The challenge is to develop a new system that integrates the various issue-specific legislation, regulations and mandates into a comprehensive ecosystem planning and management system. Such a system must provide for what I would term the comprehensive valuation and management of all aspects of the ecosystem under one jurisdiction. That jurisdiction must cover the entire watershed.

1710

In summary, from our perspective the Environmental Bill of Rights in itself is a solid piece of legislation for the 1970s, but we're worried that it does little to really advance people's understanding of, acceptance of and willing participation in sustainable development in Ontario in the 1990s and beyond.

Sustainable development in this province will only be achieved if we move to an ecosystem-based management approach. That includes planning that is focused on sustainability of our natural resources base and it includes streamlining of our current delivery systems to eliminate waste and confusion that currently impede stronger protection of the environment.

As stated earlier, we see merit in certain features proposed within the bill. While we question whether the proposed legislation overall represents the best return on a public dollar invested in strengthened public understanding and support for the environment, we will incorporate the legislation's positive features in our operations. We've consistently followed such an approach in incorporating other improvements to our service record over 50 years, and we'll continue to do so.

Mr Grandmaître: You question the ultimate success of Bill 26 for a number of reasons. One reason you've pointed to was the cutback in grants accorded to the conservation authorities of Ontario—you had a cutback of 22% or 23% last year—and you also mention that this

could be an additional cost to conservation authorities. Can you explain this?

Mr Turkheim: We anticipate there will be costs for conservation authorities in terms of complying with the legislation.

Mr Grandmaître: In what way?

Ms Jill McCall: We're looking at additional costs for the environmental registry which has been discussed, the hardware and software access etc. We're looking not only at the costs from the authorities' point of view but from the development industries' point of view in our client base, and they're looking at delay costs in the processing. Whether those will actually exist or not, we're not sure.

Mr Grandmaître: Is that the reason you told us this bill could be seen as the environment fighting the economy or vice versa?

Mr Turkheim: No. The point I was trying to make there is that, from our approach over 50 years, what we've always tried to do is bring development and environment to the table at the start, up front before decisions are made, not after decisions are made.

This bill strikes us as reactive. It puts in place a number of particular tools and mechanisms that are intended to give a second kick at the cat after a decision is made.

We have limited dollars in the treasury and we have to decide where they're best invested. From our viewpoint on the investment of those dollars, if we're interested in sustainable development, if we're interested in wider public, positive valuation of the environment over the longer term, the question has to be answered: Are those dollars better invested in upfront tools, mechanisms, procedures etc that get people into the planning and decision-making process, rather than putting a door in place for them afterwards?

Mr David Johnson: I had the opportunity to serve on the Metropolitan Toronto and Region Conservation Authority a few years ago and I know from firsthand experience that the people in the conservation movement are very concerned about the environment but have a great deal of common sense. I certainly value the experience you bring here and am most interested in your brief.

You've indicated that there could be delays in the process. You're talking about the development industry, but conservation authorities themselves have major capital projects in various areas. You have to operate within time frames, you have to operate within budgets and the projects have to be done at certain times of the year to be effective, and I'm wondering if you're saying this could impact directly on your own capital projects, that there could be a delay or various appeals against projects the conservation authorities might be doing.

Mr Turkheim: It's a possibility. The extent of the application of the bill is currently a matter of discussion among two ministries, Environment and Natural Resources, and ourselves, and many of those details have to be worked out.

Mr David Johnson: But there are many projects involving river valleys, for example. Storm sewer projects go into the valleys. They may be more municipal pro-

jects. These are projects that could involve appeals, reviews, that sort of thing. Has this been discussed at the conservation authority?

Mr Turkheim: Yes. I'll turn that question to Jill, because of her involvement in that area in some detail.

Ms McCall: Capital projects that we currently undertake are done through the class environmental assessment process, and I don't anticipate we would have much further delay. Our class A was just renewed last year. We've included a much more rigorous public participation component in that class environmental assessment document, and we think it will fulfil all the concerns that the Environmental Bill of Rights is meant to address.

Mr Wiseman: On this whole question of sustainability and sustainable ecosystems approach, I've been involved in environmental issues for some time. One of the things—and I've said this to other groups—that causes the greatest concern for an environmental group is to not have the information, to not be included in the process. Out of that comes a fear that somehow or other they're not being treated fairly or they become cynical and look for conspiracies or whatever.

Every group that has been before the committee that has come from the environmental movement has indicated that they feel the registry will be one of the best tools they have to get information, to be included in the process. When they heard there would be a modem access to this registry and that the registry would be delivered to schools and libraries via a modem they were quite pleased with being able to get that kind of information. The fact that these announcements and activities would be on the registry, allowing them to have access to it so they could monitor it in a way that would be meaningful to them, all these things were really quite positive and did not reflect the view that you've just given in terms of being reactive. It seems to me that what they're screaming for is some mechanism to allow them to be proactive and that they want to be involved. The rest of the bill really only happens if that doesn't work.

Mr Turkheim: You're referring to the kick-in parts. I would agree on the value of the registry for those purposes outlined. If indeed it motivates, particularly youth, to greater levels of involvement, awareness, sensitivity to valuation of the environment, that's wonderful.

The ad hoc reference I made to the legislation as being somewhat based in the 1970s and reactive refers more to the whole concept of the legislation itself and to some of the other tools that would come into play with regard to further petition of approvals granted or permits sought.

Mr Wiseman: Were you here when PACT made its presentation on the environmental issues?

Mr Turkheim: No, I wasn't. I'm not familiar with what PACT is.

Mr Wiseman: They are most concerned about the whole process around the Brock West landfill site, which happens to be in my riding, and how it managed to achieve level after level of approval, expansion after expansion, with no certificates. They feel really strongly

that they should be involved in the process and that they should participate, that in fact there is a place in legislation to empower local groups to do just that.

While you say that is a 1970s approach, I wish it was even more antiquated than that and unnecessary, but fundamentally, there are things happening out there by people who do not necessarily take the high road in terms of what they do in communities. The operation of the Brock North, Brock West, Beare Road landfill triangle in my riding and just across in the other is a good example of what it is that really makes community groups angry and want to participate and want to have this kind of legislation.

Mr Turkheim: There may well be, widely spread throughout this province, situations such as was just referred to where the merits of the bill are clear. The comments we make are based on our operations, our environment, if you will; those 100,000 square kilometres we try to take care of from a watershed and ecosystem perspective.

The Vice-Chair: Thank you very much. We appreciate your presence; your intervention is valuable to the committee. Time is not very long, but you did get your 20 minutes.

Mr Turkheim: I'll leave this here.

The Vice-Chair: Thank you. The clerk will distribute that.

1720

LUNG ASSOCIATION,
METRO TORONTO AND REGION

The Vice-Chair: We have a final presenter, Cyrus Maivalwala, from the Lung Association, Metro Toronto and region.

Mr Cyrus Maivalwala: Good afternoon. My name is Cyrus Maivalwala. The Lung Association is an organization committed to improving air quality through education, research and advocacy. On behalf of the Lung Association, I'm pleased to have this opportunity to make the following comments.

The Lung Association views the Environmental Bill of Rights as a landmark piece of legislation which we support in principle. For example, we support increasing public participation in environmental decision-making by government through the environmental registry system and proposals for policies, acts and regulations. We also support the enhanced protection for employees who blow the whistle on polluting employers.

However, from an environmental health perspective, we believe the omission of the indoor environment from the EBR document weakens its ability to protect public health from indoor pollutant exposures. For example, under part I, section 1, the word "air" is defined as air that is "not enclosed in a building, structure, machine, chimney, stack or flue." We suggest changing this definition to one that includes air in private homes or apartments, office buildings and public and private buildings and institutions such as shopping malls, restaurants and schools.

Indoor air should be included in the EBR because studies have concluded that the air quality inside a home,

office building or public place is often several times worse than the ambient air quality on even a smoggy day in the city. For example, TEAM studies—total exposure assessment methodologies studies—and Ontario Ministry of Environment and Energy studies found that most target compounds observed, such as particulates, volatile organic compounds and biologicals, were found in higher concentrations in the indoor environment.

Additionally, the World Health Organization declares that 30% of homes and office buildings contain enough indoor pollutants to cause adverse health effects that range from just a sniffle to more serious ailments.

Furthermore, most of us spend at least 90% of our time indoors, and for the young, elderly and sick, this percentage may even be higher. In all of these indoor settings, we need environments which will allow us to be productive and effective individuals. Poor indoor air quality has been associated with low productivity and increased absenteeism due to sickness. To disregard air quality in the EBR is an impractical allocation of resources.

The EBR is needed to provide leadership in the area of indoor air quality because no ministry is presently accepting the ultimate responsibility for indoor air quality problems. The EBR should fully address the problem of a lack of protective legislation for indoor air quality for the home, office and public and private indoor settings.

Currently in Ontario, no enforceable guidelines exist to create or maintain healthy indoor air quality. Health and Welfare Canada does recognize sick building syndrome as a legitimate illness, but the citizen is often powerless when trying to remediate the problem because of the unenforceable standards or guidelines dealing with indoor air quality in Ontario.

The Lung Association recommends that the following additions to the draft regulation of the EBR be made: The Ministry of Education, the Ministry of Consumer and Commercial Relations, the Ministry of Housing and the Ministry of Labour should be included under parts II, IV, V, VI and VII of the EBR.

The Lung Association works with the community to improve air quality and therefore would like to be involved with any further discussions of the EBR or any work group dealing with indoor air quality issues.

On behalf of the Lung Association, I would like to express my gratitude to the standing committee on general government for the opportunity to comment. Thank you. I'll be happy to field any questions.

Mr David Johnson: It was a very interesting deputation and I certainly thank you for it. I wonder if you could elaborate a little, if the air quality was part of the bill, on how you would see that working. For example, if I was dissatisfied with the air in this room, whom would I lay a charge against or who would I—

The Vice-Chair: The clerk.

Mr David Johnson: The clerk? I say that because there may be a number of different influences, and you would be the best qualified here in this room to tell us that, I'm sure. There's the street, there's the general smog—you mentioned the smog conditions within the city itself—and it may not be totally within the clerk's

jurisdiction to be able to deal with all the pollution that's in this room at the present time. How would it work?

Mr Mavalwala: That's a problem. Currently, people will phone us and say: "We think there's an air quality problem. What can we do about it?" They can phone the various ministries in relation to the problem. For instance, if it's a school, some will say it's the Ministry of Labour and then some will say it's Education. But no one has a specific mandate and responsibility to take care of that problem. When they go to the Ministry of Education and if they talk to it, the ministry will say, "Even if it is a problem, the budget's low," or something like that. Because it's not enforceable, usually nothing gets done about it.

Mr David Johnson: Your association has probably looked into the sources of pollution. I think combustion in the automotive engine, for example, or vehicles is a prime source here within an urban area like Metropolitan Toronto; factories and various sources like that. These would be somewhat external to this particular room, but I imagine their influence is coming in here.

Where would you see this leading? Would you see this leading to forcing more restrictions on automobiles or on factories, or just in dealing with influences that are internal to the room itself?

Mr Mavalwala: Certainly, the quality of the indoor environment is influenced by the outdoor environment, especially if we're taking in outdoor air to circulate within the indoor environment. However, the levels of pollution and types of pollution indoors are not very highly correlated with what's outdoors. In terms of some sources of pollution—the curtains, carpeting—it depends what type. If it's particle board, formaldehyde will come off; if this carpet got wet, maybe someone spilled some water, and it's a warm environment here, perfect for bacteria to grow; if the humidity's too high, maybe the ventilation's not suitable. Often, to conserve on energy, a lot of buildings will cut down on the ventilation or simply put plastic right over the intake so there's no fresh air coming into the building.

Often now, especially with partitions in buildings and so on, there are many more people per room than were supposed to be in how the building was originally designed. So I think we would be looking at specific indoor sources. We agree that the outdoor sources are a problem and we are working on those problems also, but the indoor air quality sources that are causing pollutants have to be examined on their own.

1730

Mr David Johnson: I presume smoking would be a big one there too.

Mr Mavalwala: Yes.

Mr David Johnson: I presume your association would see using this bill in terms of any buildings that still permit smoking.

Mr Mavalwala: Certainly. Just today, I got a call from a lady saying some of their workers don't want to be in the same room as smokers and is there some sort of mask or something that they can wear. The answer to that question is no.

Mr David Johnson: The Environmental Bill of Rights would be the answer, would it?

Mr Mavalwala: Hopefully, yes. I certainly hope so.

Mr Derek Fletcher (Guelph): Thank you for your presentation. I know you're coming at this from one perspective, and that's the indoor air quality. Other than that, you see the bill as a landmark decision and a landmark piece of legislation. I'm glad you see it that way, because so does the government of the day.

As far as indoor air is concerned, and Mr Johnson touched on this, a lot of people have done retrofitting, plugged up the holes. Ventilation isn't as good as it used to be any more and some of the products that were used to plug up the holes were just as bad or even worse than what was already there.

If I had a visitor in my house and they were getting ill from the air quality or something, the EBR, as you see it, should be there to protect them also. I'm just trying to get a grasp. Could I be charged or taken to court? I just want to get where you're coming from.

Mr Mavalwala: It would be different again if you lived in an apartment building. Then maybe you would have some way of getting the owner of the apartment building to rectify the problem. That brings on other questions such as the children. If their parents are smoking, can they sue their parents to get them to stop smoking and so on?

Mr Fletcher: Yes.

Mr Mavalwala: We haven't looked into every single avenue that might occur. Presumably, a friend, if they would go into your house, I don't think they'd want to sue you.

Mr Fletcher: I know what you mean.

You brought up an interesting aspect there as far as children are concerned. If their parents smoke, that would be a health concern as far as the children are concerned, the second-hand smoke. That is a ramification that could happen, could occur. Is there a way around this? Is there some way that we can include what you're saying without being ridiculous? I don't mean ridiculous in that way, but going to this far extreme.

Mr Mavalwala: I think certain parameters would have to limit—regulations could be drafted to make it more specific—what can be done, under what circumstances and so on. For instance, if someone came into your house, they have the option to leave. However, if they're working, do they have an option? Maybe. If they left and said, "I don't like the air quality," I can tell you what's going to happen.

Mr Fletcher: Could you address this under occupational health and safety in the workplace, as far as air quality is concerned? I know it's a tough one.

Mr Mavalwala: In terms of specific chemicals and so on, that's taken care of, but where the legislation is lacking is the office setting.

Mr Fletcher: I know. Government buildings are probably some of the worst.

Mr Mavalwala: There are a number of problems.

There's a lot of legislation for factories and so on, for indoor air quality, if they're dealing with certain chemicals or pesticides and so on. But it is the office building that has been seen in the past as a clean environment, a healthy environment, and only now we're beginning to realize. We don't even know the full extent of the problem, but everywhere that's been tested they're coming up with new problems, new sources they haven't even thought about.

Mr Fletcher: A lot of these sources could be the—

The Vice-Chair: I'm sorry, Mr Fletcher, but Mrs Mathysen has a question.

Mrs Mathysen: Actually, I think probably I was going to ask Mr Fletcher's question. I'm quite interested in some of the things in terms of your investigations, your findings regarding the things we should look for in the sick building. What are they specifically?

Mr Mavalwala: Sick building syndrome can be from a variety of sources, of factors, and there are many health implications. Most commonly it's ventilation, and that would be from more modern buildings that are more airtight, that don't have leaks and so on which allow small amounts of air to come in. Their air ventilation is more tightly controlled, so if they want to turn it down on the weekend, when presumably not too many people are in the building, they can do that. However, they may switch it on half an hour before people enter the building Monday morning. That's conserving energy.

But for the workers, you're letting all the dust settle in the ducts and so on and when you turn it on, that's just spewing all the moulds and so on, whatever is growing there, if they're not cleaned out properly and so on, right into the environment. Ventilation maybe accounts for about 50%, as some studies would say.

Other sources of pollution are biological, from ourselves: house dust. Dust mites thrive on house dust and dust mites are number one in terms of allergic reactions. So if things aren't cleaned properly, that could be a problem.

Certain air filters: People think, "If I buy an air filter, that solves the problem." In many cases, the air filters don't do the job as the person selling them claims, and in some cases they can actually pollute the environment more so.

So it really depends. You have to go case by case if you are looking at a building or a roof and so on.

The Vice-Chair: Thank you very much for your presentation. We appreciate your presence.

This concludes the public hearings part of the committee sittings. We were able to accommodate all the people who had requested to appear before the committee.

I should remind the members who are left that if you want to put any amendments forward, the clerk would appreciate receiving them as soon as possible but especially before the 18th.

This concludes today's sittings.

The committee adjourned at 1737.

Continued from overleaf

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Dadamo, George (Windsor-Sandwich ND)

*Fletcher, Derek (Guelph ND)

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Sorbara, Gregory S. (York Centre L)

*Wessenger, Paul (Simcoe Centre ND)

White, Drummond (Durham Centre ND)

**In attendance / présents*

Substitutions present/ Membres remplaçants présents:

Lessard, Wayne (Windsor-Walkerville ND) for Mr Dadamo

Offer, Steven (Mississauga North/-Nord L) for Mr Sorbara

Mathysen, Irene (Middlesex ND) for Mr Morrow

Tilson, David (Dufferin-Peel PC) for Mr Arnott

Wiseman, Jim (Durham West/-Ouest ND) for Mr White

Clerk / Greffier: Carrozza, Franco

Also taking part / Autres participants et participantes:

Arnott, Ted (Wellington PC)

Ministry of Environment and Energy:

Lessard, Wayne, parliamentary assistant to the minister

Shaw, Bob, coordinator, Bill 26 implementation

Staff / Personnel: Luski, Lorraine, research officer, Legislative Research Service

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Standing committee on
general government

Comité permanent des
affaires gouvernementales

Environmental Bill of Rights, 1993

Charte des droits environnementaux
de 1993

Chair: Michael A. Brown
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STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday 18 November 1993

The committee met at 1018 in committee room 2.

ENVIRONMENTAL BILL OF RIGHTS, 1993

CHARTRE DES DROITS ENVIRONNEMENTAUX DE 1993

Consideration of Bill 26, An Act respecting Environmental Rights in Ontario / Projet de loi 26, Loi concernant les droits environnementaux en Ontario.

The Chair (Mr Michael A. Brown): The standing committee on general government will come to order. The business of the committee today is to deal with Bill 26, An Act respecting Environmental Rights in Ontario, and the purpose of this meeting is to start the clause-by-clause examination of the bill.

Mr Jim Wiseman (Durham West): Mr Chair, I believe, given the introduction you've just made, that the agenda is not in order for this afternoon, that the resolution that was passed earlier would indicate that we would have to dedicate today to clause-by-clause of Bill 26 and that really this 3:30 item should read, "Clause-by-clause consideration of Bill 26 followed by the subcommittee report." I would ask that the afternoon agenda be changed to reflect that.

The Chair: I would just point out, Mr Wiseman, that at the subcommittee meeting yesterday, all three parties agreed that this was the way we would proceed this morning and this afternoon. But of course any decisions of the subcommittee need to be ratified by the committee if there is any kind of problem members see with the way the committee has organized its work for the day.

Mr Wiseman: I would ask that you make a ruling on whether the subcommittee was in fact in compliance with the resolution that was passed by this committee earlier with respect to this item at 3:30.

The Chair: The Chair is governed by two things: One is the motion of committee on how it organizes its business, but in an effort to have the business conducted in an orderly fashion, given that there are changes from week to week around this place, the subcommittee generally gives the Chair direction on what will be considered each day.

I'm not certain that this is out of order, but I would entertain a motion saying that we will deal only with clause-by-clause today.

Mr Wiseman: Then I would like to move that, that we will deal with clause-by-clause today, followed by the subcommittee report should clause-by-clause be completed.

The Chair: Thank you. Mr Wiseman has made a motion. Mr Tilson.

Mr David Tilson (Dufferin-Peel): Mr Chair, I'm not too sure of the intent of the motion. I think we're following the right procedure. If I recall, the final sentence of your motion reads that we would start clause-by-clause discussions of Bill 26 today, and we are about to do that.

I wasn't present at the subcommittee meeting—I

happened to walk by it at one time and it looked like the usual vigorous debate was going on—but my understanding was that all three parties did agree that notwithstanding—and I don't think it contravenes your initial motion of several weeks ago. I'm speaking through you to Mr Wiseman, Mr Chair. We are starting clause-by-clause discussions of Bill 26, and all three parties, Mr Grandmaitre, Mr Turnbull and Mr Mammoliti agreed, as the representatives of the three parties, that the topic listed on the agenda would indeed take place at 3:30. So you've rather caught me by surprise, because I understood that was an agreement of all three parties.

Mr Wiseman: I think this debate we are currently having on this issue does not conform to the resolution this committee passed.

Mr Tilson: Probably your motion's out of order.

Mr Wiseman: What I would suggest is that the Chair should rule. That was my hope, that the Chair would rule that we would just switch this around and that we would avoid a long discussion this afternoon and that we would deal with it without having to break up the flow of the clause-by-clause, which I'm sure everybody would like to move ahead with.

Mr Tilson: To repeat, there's no question that your motion did not say we would start this morning and go on ad infinitum—in fact, actually that's what it does say, will go on ad infinitum—but your motion says we will start debate on clause-by-clause today. I repeat your motion is probably out of order, because that's what your motion said—right now, at this very second, we're contravening your very motion—but that's nothing to preclude this committee dealing with the resolution that was put forward and passed by the government House leader to deal with Bill 26. A subcommittee meeting was held yesterday, as you know, in which all three parties were present and in which it was agreed upon by all three parties that the subcommittee report would be presented today at 3:30. That was the agreement of all three parties, and either a deal is a deal is a deal, or it's not.

The Chair: Are there further members?

Mr Hans Daigeler (Nepean): To deal with the subcommittee report at 3:30 was clearly an effort to accommodate in some way the desires of the government House leader to get some other bills passed, as he put that all of a sudden on to this committee. If we're not dealing with the subcommittee today at all, for sure there won't be enough time for Bill 47 in this session. It clearly was an attempt yesterday to see what can be done with regard to the motion that was put forward in the House this week and was kind of unexpected for this committee.

Mr Steven Offer (Mississauga North): I have a problem in understanding the process here, because I'm on this committee as the Liberal Environment critic and I'm substituted in and have been part of that subcommittee dealing with the EBR. I'm not part of the subcommit-

tee that's dealing with the subject matter of the subcommittee's report, which is Bill 47.

The problem I have is that Bill 47 is here as a result of an allocation motion which I understand was passed by the Legislature, and I just don't know if there is a preference or a priority that has to be attached because of the fact that the government has sought to institute time allocation on Bill 47 and the subcommittee charged with the ordering of affairs of that bill in this committee has had a specific reaction to the time allocation motion.

It's as if we've got two subcommittees, one dealing with the EBR, which dealt with certain decisions at subcommittee and motions in the committee, and now we have another subcommittee dealing with 47, and there seems to be a bit of a grinding. My concern is, as I want to go along with the EBR, that there's a time allocation which has been moved by the government on Bill 47 that the subcommittee charged with that responsibility feels it necessary to respond to.

The only reason I wanted to speak on this was that I have a concern about how you deal with the two different subcommittees, one of which is looking to move ahead with the EBR, the other of which is very concerned with the time allocation that the government has instituted on the bill it's responsible for. It has a time problem on this matter and wants to deal with that in the committee.

Truly, I take no position on that, save that it's a serious matter, especially as the problem is the time allocation which was introduced by the government that the subcommittee wants to respond to.

The Chair: Is there further debate or comment on Mr Wiseman? Mr Tilson.

Mr Tilson: Just to again remind Mr Wiseman that the three parties did agree to this agenda, and you can't come along at the final hour, unless your—I don't know; I hope your word's better than that. The fact of the matter is that all three parties agreed to this agenda, so I would hope he'd withdraw. You can outvote us here, no question, but I would ask you to reconsider your position, because all three parties agreed to this agenda.

Mr David Johnson (Don Mills): Mr Chairman, I'm not 100% sure of the procedure here, but I thought the House took a position with regard to Bill 47 and that Bill 47 was to be dealt with with some urgency. I rather anticipated when I saw that motion in the first instance that actually today we would be dealing with Bill 47 and not Bill 26.

I don't quite understand the hierarchy here, but it seems to me that the House as a whole should have some priority over a committee and a committee should listen to the message it's getting from the Legislature as a whole. I think, whatever we think of it, that the direction we were getting was that Bill 47 should be given urgent treatment.

When I saw the agenda, it seemed to make a whole lot of sense in that it would allow for the earliest consideration of Bill 47. I would guess that in your consideration of this whole matter, you would be entertaining the motion of the committee, but also, somehow you would have to factor in the motion that has been approved the

other day—two days ago, I guess it was now—with regard to Bill 47 in the Legislature itself.

1030

The Chair: Mr Johnson, you are describing exactly what the quandary of the subcommittee was yesterday.

Mr Offer: I spoke earlier on this and I will repeat this, but I think the agenda as set out is something which I think has to be followed. Hopefully, the consideration of the subcommittee report won't take an inordinately long period of time.

I think the subcommittee has made a report and has asked for this to be brought back to the committee. I think the committee has to be bound by the wishes of the subcommittee. It would be a very strange day where a subcommittee makes a decision and wants the report decided by the committee and the committee says, "We're not going to deal with the subcommittee's request." It's different from whether you agree with the subcommittee's report. The question is, you cannot as a committee decline to entertain the subcommittee's report. That's a strange procedural problem which I think would cause some great difficulties. I think you just have to deal with it and get on with clause-by-clause right afterwards.

The Chair: Further discussion on Mr Wiseman's motion? All in favour of Mr Wiseman's motion? Those opposed? Mr Wiseman's motion is carried.

The members would note that Mr Wiseman's motion then changes the agenda of the committee, eliminating that 3:30 time to consider the subcommittee report, and that we will deal only with Bill 26 in clause-by-clause. I would point out to members, however, that motions are always in order.

Interjection.

The Chair: I am told that I did not actually have a copy of Mr Wiseman's amendment, and maybe the clerk wants to read that in.

Clerk of the Committee (Mr Franco Carrozza): The motion that was carried states, "Mr Wiseman moved that we proceed with clause-by-clause review of Bill 26 at 3:30 pm followed by the motion on Bill 47 when we finish."

The Chair: I think we better just do that vote again so that everybody's clarified.

Mr Tilson: I have a point of order, Mr Chair.

The Chair: I'll allow a point of order.

Mr Tilson: I know we voted on it and it's carried, but by this motion we've created a rather difficult technical problem. We have a House motion, and I guess it's debatable as to when this committee is to deal with Bill 47—before second reading, after second reading, I don't know. There's that debate that I gather is going on in subcommittee, and I don't know the details of it.

Now we have this committee saying, "Well, we'll talk about Bill 47 when we finish dealing with Bill 26." That doesn't necessarily mean we're going to deal with Bill 47 today. In fact, I would hope this committee is going to spend more than just one day on clause-by-clause of Bill 26.

We're now effectively, with this motion, contradicting

a motion—the House leader's motion was put forward by this House. This committee may go on for some time on Mr Wiseman's own motion. Mr Wiseman's motion says we will start clause-by-clause today. It doesn't say we're going to deal with it today; it says we'll start with clause-by-clause today.

Mr Wiseman: No, all it deals with is this afternoon's agenda item.

Mr Tilson: I'm sorry; that is not what your motion says. Your motion says we will deal with Bill 47 at the conclusion, at the end, of Bill 26.

Mr Donald Abel (Wentworth North): It's a debate, so it's out of order.

Interjections.

The Chair: I believe it is not a point of order, Mr Tilson, although I think it points to some irreconcilables here.

Mr Tilson: That's my point.

The Chair: I'll just read this, read Mr Wiseman's motion once more, and then we'll vote.

Interjection: We've created a nightmare, as usual.

The Chair: Mr Wiseman moves that we proceed with clause-by-clause examination of Bill 26 at 3:30 pm, followed by the motion on Bill 47 when we finish.

All in favour? Opposed? It's carried.

Interjection.

The Chair: Motions are always in order, Mr Tilson.

We will return to clause-by-clause examination. The Chair had lost his amendments, but he has now found them. We will commence with the preamble. Unless the committee otherwise orders, the preamble is postponed until all clauses, new clauses, schedules and new schedules have been agreed to. The preamble can be amended if it is rendered necessary by amendments made to the bill, or for clarification and uniformity. It is my opinion that the amendment proposed by the government should therefore be dealt with at the end of the clause-by-clause discussion. We'll then move to part I.

Mr Offer: Has that been somewhat deferred?

The Chair: That would mean deferred, Mr Offer.

All right, we will commence with part I. I see a government amendment. We need someone to put the government amendment.

Mr Wayne Lessard (Windsor-Walkerville): Yes, I'm going to put the government amendment.

I move that the bill be amended by striking out "definitions" in the beginning of the heading for part I, and substituting "interpretation."

The Chair: Pursuant to Erskine May, 21st edition, on page 490, the paragraph on amendments to headings, it specifically states, "The marginal notes or short titles of clauses and the headings of parts of a bill...do not form part of the bill and are not open to amendment." In my opinion, the amendment is out of order. However, the paragraph can be interpreted to imply that since the headings are not part of the bill, therefore legal counsel can change the word editorially without the amendment. It's out of order.

We will now start with subsection 1(1). Are there questions, comments or amendments to subsection 1(1)? Mr Tilson has an amendment.

1040

Mr Tilson: I move that subsection 1(1) of the bill be amended by striking out the definition of "instrument" and substituting the following:

"Instrument", except as otherwise provided under clause 122(1)(c), means any document of legal effect issued under an act and includes a permit, approval, authorization, direction or order issued under an act, but does not include,

"(a) a regulation, or

"(b) an approval issued under the Environmental Protection Act, the Environmental Assessment Act or the Ontario Water Resources Act for a waste disposal site or a waste management system within the meaning of part V of the Environmental Protection Act."

The Chair: Thank you, Mr Tilson. An explanation for the amendment?

Mr Tilson: This amendment was encouraged by our hearing the presentation of the Ontario Waste Management Association. I will say that, speaking in general to the amendments of the Progressive Conservative Party, which include this one, the amendments that we're putting forward have two broad principles.

We're concerned that this bill has some bureaucratic duplication, as was put forward by a number of the presenters, particularly AMO, Laidlaw and the Ontario Waste Management Association, to name some. We're concerned that the bureaucratic duplication be minimized. We want to ensure that the integrity of the current environmental review processes is maintained, and we're concerned that this bill creates that. We want any environmental bill to be made fair and equitable for the proponents and operators of new and existing projects.

I think if you look at this amendment we've put forward, you will recall—I don't know whether you still have copies of the Ontario Waste Management Association. If you have that, if you could specifically turn to page 4 where that topic is dealt with, both the Ontario Waste Management Association and Laidlaw made presentations submitting to the committee that applications submitted to the Minister of Environment and Energy "pursuant to the provisions of the Environmental Protection Act, the Environmental Assessment Act and the Ontario Water Resources Act should not be subject to parts II, IV and V" of this bill.

Waste management and other proposals under all of these acts that I've just listed require a very thorough and rigorous environmental approval process and involve affected members of the public, who have the right at those times to submit comments and make their concerns known.

That's the rationale of this amendment. I could refer specifically to some of the submissions, depending on what comments other members of the committee happen to have.

Mr Lessard: We won't be supporting this amendment. I understand what the effect of it is; however, it

only deals with removing waste disposal sites and waste management systems from the application of the act, and nothing else. It would also remove all waste-management-related instruments from the requirements of the bill. This is the impact that it would have.

The public wouldn't be notified of proposals or be able to comment on waste-management-related instruments unless there was a hearing that had been required under the Environmental Protection Act. The public wouldn't be able to request a review of a waste-management-related instrument regardless of its age, whether or not there had been any opportunity for public input into the decision. The public wouldn't be able to request an investigation for contravention of a waste-management-related instrument, and the public wouldn't be able to file suit when the contravention of a waste-management-related instrument is resulting in harm to a public resource.

Examples of waste-management-related instruments that we would be referring to in this case would include things like certificates of approval for waste disposal sites, for transfer stations and also with respect to air emissions or system certificates for waste hauling, and that can include hazardous waste as well. The public wouldn't be notified and be able to take advantage of the Environmental Bill of Rights in all of those circumstances if this amendment were to be successful.

Mr Wiseman: Hearing that, I would like to give Mr Tilson the opportunity to withdraw this amendment. I know his constituents would really want him to withdraw this amendment and hope it wouldn't pass, given the current situation they are facing in their landfill problems with the IWA. I don't think Mr Tilson would want to have this kind of amendment there which would preclude even further the rights of his residents to challenge and to have future challenges of whatever mistakes, errors, omissions or problems would be created should the site in Caledon be successful at the Environmental Assessment Board. I'm going to give him the opportunity to withdraw this.

The Chair: Mr Johnson, Mr Offer and Mr Tilson.

Mr David Johnson: It's been indicated that transfer stations and waste disposal sites would come under the umbrella of the motion Mr Tilson has rightfully put forward, but other facilities that would come under the same umbrella would include recycling plants, for example.

This may be the kind of facility that the government may say should go ahead, that we should put that in as soon as possible and let's get on with the job. Chances are, if such a facility already went through an environmental assessment of some sort, that there could well be an objector and such a facility could be held up. A compost plant could be held up, a material-recycling facility could be held up, a facility that has already gone through some environmental process and already had public hearings, could well indeed have gone through local planning hearing. There could have been planning hearings, there could have been environmental assessment hearings and now, by this bill, it would be subjected to further delays and further public hearings when those hearings have already taken place.

I think perhaps the government members may be looking at one side of the coin. They may be hit with the other side of the coin and find that facilities that they may wish to proceed indeed could be held up with the process.

I was just scanning the clippings from this morning. It's interesting that one of the articles in the Toronto Star today deals with objectors who apparently will be attempting to put the expansion of the Sheppard subway line through an environmental assessment process. This is one of the job creation activities that Mr Rae and this government, the Premier and this government, have touted.

Indeed, there is a quote in the paper today from the executive assistant to the Environment minister, Mr Wildman, that the Sheppard line is one of the two lines where the government would like to see a shovel in the ground soon, and yet we have people demanding an environmental assessment of this line. There's another quote in the paper indicating that to get a hearing for such an assessment will take several months. It could even take longer than that.

So here is one of the major initiatives that the government is attempting to bring forward. It's undoubtedly now going to be held up because there are several groups demanding an environmental assessment, the same sort of situation we're looking at that Mr Tilson is trying to address with his amendment. It's fine and necessary to have public hearings up to a certain level. Once the hearings are held, then it's duplication, it's the same thing over and over again, and it's time to get on with the job.

1050

The amendment Mr Tilson is putting forward allows for those hearings through the environmental assessment, perhaps through local planning procedures, but suggests that we not have on top of that again another round of public hearings. If we're going to go ahead with Bill 26, then at least let's avoid that kind of duplication and support this motion.

Mr Offer: I'm not necessarily going to respond to the comments by Mr Wiseman, but if he had any questions about how people feel about his government's choosing of waste disposal sites, it would have been nice to have had a member of his government at a meeting last night held in Caledon, where people were looking for some answers.

Mr Tilson: Not one NDP member was there. It's a disgrace.

Mr Wiseman: Nobody told me.

The Chair: Let's speak to the amendment, if we can.

Mr Offer: I was getting to that. I remember the submission made on this issue, I think it was by the OWMA and Laidlaw, and I think the concern they had was due to section 61 and what would follow and section 74 and following; in other words, the applications for review and applications for investigation.

What they were saying was that when they set up a facility of any kind, it goes through a very rigorous examination process: It goes through myriad regulations, myriad discussions between any proponent and the

Ministry of Environment. I think the concern was that after going through all of that and receiving approval and then complying with the certificate, which is also defined as a regulation, somebody can come and say, under section 61 and/or 74, that the regulation should be changed.

What would happen is that particular industries would have been complying with the strict requirements of the ministry and, in compliance with the strict requirements, have received an approval. Then after the fact, under sections 61 and 74 and what follows, someone would say, "Yes, you have complied with the law, but we think the rules should be changed."

I think the concern was raised, what effect or impact would that have on amendments to certificates and things of this nature which come in the usual and normal course? I have a problem, and it's not a problem with the amendment but rather with the process which this committee has been thrown into, that the government—and I'm not talking about government members, I'm talking about the ministry—has not answered the question, the question being, if a company follows the rules and receives approvals and, after the fact, someone uses the EBR, section 61 and/or 74, and the rules are changed, will that have any effect or impact on the company which had been following the rules as dictated by the ministry but now the rules have somewhat changed midstream?

The government has never responded to that question. If they would say that if the company has respected and complied with the rules and will not be affected by any changes that might occur under section 61 and/or 74, I think much of the concern might be alleviated. The problem is that the ministry officials have not yet responded to what I believe was a very specific question. If you follow the rules and the rules are changed down the line, does that mean you're not following the rules? Can I ask that question?

Mr Lessard: Reality indicates that governments change, and when governments change the rules sometimes change. Information of scientific and economic and social nature changes as well, and when rules change, people are expected to comply with them. I think that would happen notwithstanding the Environmental Bill of Rights.

Mr Offer: Just to continue on that, the question is that if a company has received an approval based on rules which have been set down by the ministry, has gone through all of the processes, has received the approval, has not broken any of the rules, in fact is following that, and then as a result of the Environmental Bill of Rights, section 61 and what follows, the rules are changed, will that put the company in difficulty? They've been following the rules by the ministry. Somebody has sought to change the rules under section 61. Does that put the company in jeopardy? There's an issue of fairness involved here.

Mr Lessard: If the change in the rules took place, certificates would have to be changed, for example, and anyone whose certificate was changed would have a right of appeal as well. They could appeal to the ministry if they didn't agree with the changes to the certificate.

Mr Offer: This underscores the problem I personally have with the bill. If a company has followed the rules and has received approval by the ministry and is complying with that approval and then somewhere down the line someone seeks to change the rules, should we not deal in an issue of fairness as to whether that company should suffer a penalty because it had the audacity to follow the rules? Should there be some protection afforded to companies that obey the law?

This section 61 and what follows says a company can be obeying the law, can have received the approvals, can be following exactly what the ministry says and then one day wake up and get a note that says: "While you were sleeping, we changed the rules. Even though you were following our rules when you went to bed, overnight we changed the rules, so you are in contravention." I don't think it's an answer to say to the company, "Well, you can appeal." Appeal what? They were following the rules. The problem is that the ministry officials respond in the way I fear.

Mr Tilson: I'd like to comment on Mr Wiseman's remarks. As he knows, I have expressed concern that the Environmental Bill of Rights, as being proposed, will not apply to the process that's now going on with the Interim Waste Authority. You're quite right that my amendment would confirm that.

I can tell you that both opposition parties, both the Liberal opposition party and the Conservative opposition party, have made it quite clear that if either of us get into power in the next election, we will repeal Bill 143.

1100

Bill 143 creates just an awful process, and I know you're experiencing it in your riding. Constituents are most concerned that they haven't had proper discussion, that the IWA has not listened to them; that there's been a terrible process that's been created and they're not looking at all of the possible alternatives; that the IWA is following the instructions of the New Democratic government with respect to waste management, and that is simply to put garbage in a hole in the ground and not look at other alternatives, and there are other alternatives.

Mr Wiseman: Not necessarily a hole.

Mr Tilson: All right, a landfill site, to use the wonderful word, but it's a dump.

Mr Wiseman: They haven't been ruled out.

Mr Tilson: You certainly have ruled out. You've ruled out any discussion with respect to the topic of incineration; you've ruled out all kinds of things. The whole process of the IWA has been flawed from the beginning and continues to be flawed. Even as we speak it's being flawed.

The very fact that your government intends to put three superdumps in the GTA within three years is the most unheard-of proposition anyone has ever heard of, particularly when you look at places like Halton that took 17 years, and I think there's still no garbage going in there because there are still concerns going on. There are grave problems with putting garbage in holes in the ground, and you know that.

I'm concerned about the fact that the proposed bill of

rights does not apply to the Interim Waste Authority, and I'll tell you how we'd do it. We'd fix the terrible, terrible mistake you've made, that the NDP has made, with respect to Bill 43. If you have a good environmental process, a good assessment process—and it wasn't too bad before; you considered all processes. All processes need to be improved, but you've completely destroyed it. You've absolutely destroyed the environmental process.

Having said that, this motion is being made on the presumption that either a Liberal government or a Conservative government will change—and obviously, I hope a Conservative government—Mr Chair, I didn't mean to startle you like that.

Interjection: He'll be okay, David, just give him a minute.

Mr Tilson: I would hope another government would change the process you've created. In fact, it will, because both opposition parties have made commitments. The intent of this amendment, if I could get back to the topic, Mr Chair—

The Chair: It's always appreciated.

Mr Tilson: The intent of this amendment, to repeat what I said in my preamble to most of the amendments we will be putting forward, is to do away with duplication that is being created by the bill.

I could go on and on with Mr Wiseman's challenge to withdraw the amendment. I can assure you, Mr Chairman and Mr Wiseman, that I will not be withdrawing it, because we would be doing other things. We would be correcting the goof you people made with Bill 143 and the creation of the Interim Waste Authority. We would be disbanding the IWA and getting back to a proper procedure that existed before.

I'd like to refer very briefly to the Laidlaw report—obviously, that wasn't listened to—because that's the intent of this amendment.

"The MOEE has stated that one of the benefits of this bill is that 'business will have a uniform and predictable process for obtaining environmental approvals.' Laidlaw is not convinced that the Environmental Bill of Rights establishes a clear-cut timely approval process. If anything, we are concerned that the bill will delay the approval process already in place, in particular, those approval processes established under"—and then he lists the pieces of legislation, and I can assure you that Bill 143 is not in this batch of pieces of legislation, notwithstanding that Bill 143 is done, of course—"the Environmental Protection Act, the Environmental Assessment Act and the Ontario Water Resources Act which waste management companies, such as Laidlaw, are subject to obtaining certificates of approval."

In other words, getting back to Mr Offer's excellent comments, companies expect rules and they follow these rules. They get their approvals, they get their certificates, whatever they're applying for, and then all of a sudden, someone who doesn't like the process that's gone forward under the environmental bill can come along and make them go through the whole thing again. That is the fundamental reason for this amendment.

With respect to the Ontario Waste Management

Association's presentation—for those of you who have that presentation, I'm going to refer to page 4—"In the case of an application for a new diversion facility, MOEE staff invite comment from the municipality(s) in which the site is to be located. In addition, the Planning Act provides for public consultation when approval of proposed aversion facility requires either a rezoning, site approval or a municipal plan amendment," and there are similar concerns with respect to AMO in its presentation.

"It is our position that making waste management industry certificate of approval applications subject to the provisions of Bill 26 would only result in over-regulation." In other words, they're concerned about a fairness, they're concerned about a consistency to a process. "Current ministry practices already recognize the public's right to participate and comment. Bill 26 would only prolong and complicate an already arduous and costly process."

That is the submission for this. In conclusion, I believe that if this amendment isn't passed, because of the word "instrument" and the effect it's going to have on other parts of the legislation, namely parts II, IV and V, it will create grave concern and grave cost, a duplication process to a reasonably good process we already have.

Mr Wiseman: I have to disagree fundamentally with the approach taken by the two opposition parties. The reason is that I think we need recognize that as time passes and as technology and its abilities to ameliorate the worst effects of some of the things that are happening in our society change, regulations and other aspects of bills and other aspects of how this work is done should change too.

I do not believe that certificates of approval should be carved in stone for ever. All you need to do is look at the Brock West landfill site in my riding and you will find that its certificate of approval, which is 12 pages, does nothing to force upon Metro's works department the higher standards and better standards of landfilling.

In fact, if I've got this right, and by no means am I a lawyer, if section 38 of the Environmental Protection Act actually held any power, had any level of force—and I'll read it to you so that everybody has an idea of what it says. Section 38, powers of the director:

"(1) The director, after considering an application for a certificate of approval, may issue a certificate of approval or provisional certificate of approval.

"(2) The director may,

"(a) refuse to issue or renew;

"(b) suspend or revoke; or

"(c) impose, alter or revoke terms and conditions in,

"a certificate of approval or provisional certificate of approval where,

"(d) The waste management system or the waste disposal site does not comply with this act or the regulations; or

"(e) he considers, upon probable grounds, that the use, establishment operation, alteration, enlargement or extension of the waste management system or the waste disposal site may create a nuisance, is not in the public

interest or may result in a hazard to the health or safety of any person. RSO 1980, c. 141, s. 38."

That implies that the director has a broad scope of powers, but let's take a look at what happened in reality. If you turn to Estrin, 1985, *Environmental Law*, this is where we're getting to the point. It says on page 155:

"Although the regulations prescribe standards for the location, operation and maintenance of waste management systems and sites, they may not be legally binding on any person unless their observance is made a condition in a certificate of approval."

In other words, if it's not in there in the first place, if I've got this right, then you can't do anything about it. They can continue to pollute and to make a mess no matter what.

"However, the designated ministry official may order the owner of any system or site to which the part and the regulation apply and which is not in conformity therewith to conform within the time specified in the order. Where there is non-compliance the official may undertake the work and recover the costs."

1110

If you go to the next part of this, and I've done a little homework, in the case of *Sydenham v Owen Sound*, it says, "With regard to prescribed standards for other systems or sites, there is no section in the act or the regulations that specifically provides or implies that the breach of such standards is an offence."

Mr Offer: On a point of order, Mr Chairman: Could we have a moment to gown before we hear the particulars?

The Chair: That is not a point of order.

Mr Wiseman: My whole point on this is that my residents do not want to have to go through what they've gone through for 20 years on the Brock West landfill site where, because the Environmental Protection Act did not apply before June 1980, the town and the region sold the road right of way for \$2 and expanded by some seven million cubic metres a landfill site with no hearing. They have suffered the expansion of the contours of the Brock West landfill site in violation of the certificate of approval, theoretically, and have had no recourse. The cover material, which theoretically should have been chargeable under the sections of the act, was not.

If standards change and the ability to ameliorate the worst effects of landfill sites changes, they need to know that the regulations will change and that the certificates of approval will change in compliance with them.

You only need to look at the Brock North landfill site, which is leaching thousands of litres of leachate per day that has to be hauled out to the tune, I believe, of some \$700,000 a year in costs to the Metro works department.

My point is that if that dump—which, I have to point out to you, is one third the size of the current Brock West landfill site and is less than one third the size of the Beare Road landfill site right on the boundary—if that landfill site goes through and passes an Environmental Assessment Board hearing, I want to know that my residents are protected by the Environmental Bill of Rights and that they can intervene at all times to make

sure that section 38 of the Environmental Protection Act, or any other instrument that can be created through the Environmental Bill of Rights and the application to the minister, in effect takes place. To take out that right, from my point of view, as a person who wants to reflect the best interests of his community, would be totally unacceptable.

Therefore, there is no way I could support a watering down or a weakening of these sections of the act. It would leave my residents, who are going to be battling landfill sites and the worst effects of them for the next 40 years, even if EE11 doesn't pass because of Brock West, with no recourse. If you go on to take a look at the Environmental Protection Act, once a landfill site is closed, you cannot come back and order a cleanup.

I think these are very serious implications from the amendment the PCs are putting forward, and I cannot in any way, shape or form support them now or in the future.

Mr Offer: Just a short point. I've listened intently to the discussions which have gone on and I'm wondering, through the parliamentary assistant to the government, whether it would support an amendment to this motion which would exclude "waste disposal site" and rather change that to "waste management system other than a waste disposal site." This would meet with the concerns that have been raised by all parties. Any concern about a waste disposal site would be excluded, but all the other concerns would be addressed.

Mr Lessard: I just want to have somebody from the ministry staff indicate what the effect of that might be.

Mr Offer: It would exclude the disposal site but would include haulage, MRFs and things of this nature.

The Chair: Identify yourself for Hansard, please.

Mr Robert Shaw: I'm Bob Shaw. It would also include removing out "transfer stations." It is possible to establish transfer stations without public hearings. We have had experience that transfer stations quite often create problems with surrounding neighbourhoods.

Mr Offer: Do I take it that you would be supporting that change?

Mr Lessard: I'd say no at this point.

Mr Offer: In dealing with the motion on the table, because so much is centred on the issue of the waste disposal site, is it in order to question whether the Environmental Bill of Rights would be available to individuals who wish to question, on an environmental nature, the policy of the government by excluding from environmental assessment hearings waste haulage and/or any other alternative?

Mr Shaw: Can you run that by me again?

Mr Offer: Basically, under the Environmental Bill of Rights, can an individual, on the basis of what he or she believes is best for the environment, ask for a change in the policy of the government which currently excludes waste haulage and other alternatives such as incineration?

Mr Shaw: Under the provisions of part IV of Bill 26, two residents of Ontario may ask the government to review its policies concerning those matters.

Mr Lessard: I just want to bring to the attention of committee members the protections that are provided under section 68 with respect to reviews. I know that people who have been granted instruments and were operating businesses in compliance with them don't want to be the subject of continuous or endless review processes, and section 68 indicates that reviews of decisions made during a five-year time period preceding the date of the application for review, if they've been made in a manner that is consistent with the intent and the purpose of part II of the bill, aren't going to be the subject of review.

The minister has some discretion in calling for reviews, and there is that five-year time period that provides protection. There is an exception to that, and that is if there is social, economic, scientific or other evidence that the failure to do such a review could result in significant harm to the environment. It's only if there were social, economic, scientific or other evidence indicating that there would be significant environmental harm to the environment that reviews would take place more than once every five years.

1120

Mr David Johnson: I would submit that there will be any number of submissions that would be possible on a social or economic basis on a monthly basis, let alone on a five-year basis. As to how the minister will exercise that discretion, I think the people involved in the waste management system would really not have much confidence as to how that might be exercised. It's not just the waste management system either. We've heard from the mining association, we've heard from forestry and we've heard from municipalities in terms of capital projects that they may bring forward as well.

It's simply that the bill, as it's brought forward, seems to cast a very wide net, and if it's exercised to the fullness, there could be a considerable number of reviews. There could be a considerable number of reviews in the waste management industry, for example, that we're talking about here this morning.

I think the concerns Mr Wiseman is bringing up are undoubtedly quite valid.

Mr Tilson: Maybe.

Mr David Johnson: Well, maybe, but I would give him the benefit of the doubt. There certainly have been landfill sites, Metro landfill sites, but there are other landfill sites across the province of Ontario that have caused problems for adjacent neighbours. It's only common sense that would have happened.

I question whether we need a bill of this magnitude to address those kinds of problems. It seems to me like it's killing a fly with a sledgehammer to bring in a bill that impacts our life on such a broad basis, not only waste management sites but how municipalities do their business, the mining association and the tens of thousands of jobs that are involved there, and the forestry association. Surely, if the major concern is the leachate involved with landfill sites or the seagulls or the odour or the paper or the waste, that sort of thing, there has got to be a more direct way of dealing with those issues.

As a matter of fact, this bill really doesn't purport to give any more powers in dealing with them, it just brings people in. At least, this is how the thing is being sold. It allows two citizens to lodge a complaint. But if there are problems out there right now, the elected representatives, such as Mr Wiseman and myself and the municipal representatives, should be dealing with those in a satisfactory fashion. It shouldn't be necessary that people should have to have a bill like this to lodge complaints.

Even given that this bill is passed, theoretically there is still no more power in here to deal with the leachate other than what exists at the present time. It just allows people to make those kinds of complaints. But what it also does is throw a monkey wrench into the timing; it involves more hearings. I don't think it's possible to state too emphatically the concern that is out there in several sectors, and we've heard the deputations, that this will be a never-ending process, that there will be review after review and appeal after appeal.

I just want to be on the record. Mr Tilson has quoted from the Ontario Waste Management Association. I want to quote another piece from it, because the projects and the situations that will be impacted are not just the landfill sites that I'm sure would be of concern to all of us in terms of their impact on the community, but they will be green projects, projects that this government and all of us would hope would go ahead on a timely basis. I'm going to quote just a little piece from the Waste Management Association brief, because I think it spells that out. It says:

"As the bill now stands, achieving the province's goals for waste diversion will also be imperilled. During the past few years, the province has been anxious to expedite the approval of new 3Rs facilities. These are the types of facilities that you contemplated when the permit-by-rule regulations were promulgated. Should these same facilities, which all require certificates of approval, be subject to Bill 26, their startup would be further delayed. In a worst-case scenario, it could mean that these facilities would never get established. That means fewer jobs and fewer facilities to help achieve the desired target of waste diversion from landfill."

That target is a 50% reduction, although we had a deputation the other day that said it should be actually 86% rather than 50%. That deputation, I might say, was suggesting storage in above-ground facilities, which I'm sure would require some sort of certificate, and notwithstanding the planning process, the public hearings, all the neighbourhoods that would be invited to participate in determining whether an above-ground facility should be stored in a location, this would again be another level. How many hearings do you go through?

Just to carry on, it says, "We think that Bill 26 would work at cross-purposes with the new 3Rs regulations. This would be especially true if objections to the establishment of such new facilities were based on socioeconomic reasons rather than environmental concerns."

I think the parliamentary assistant has indicated that the minister would have the right to reconsider, on essentially any time basis, for socioeconomic reasons or

environmental reasons, so I think that needs to be put on the record.

This is obviously going to go through, but when we sit back a few years from now and wonder why we don't have the 3Rs facilities we need to achieve our goals of waste reduction, why there's been such opposition and why the public sector is shying away from these facilities and not participating, my guess is we'll look back to this bill and we will see that this could be one of the prime reasons.

The New Toronto Street recycling facility, for example, on the Etobicoke lakeshore, which involved an investment of \$35 million and created 60 new jobs, requires a certificate of approval. That's the very kind of facility that would come under the jurisdiction of this bill, and probably another level of opportunity to object, another reason for the private sector to stand back and say: "I've got too much red tape already. Am I prepared to go through another level, ie, Bill 26?"

There was a suggestion that the amendment be amended. I guess that's possible. The parliamentary assistant indicated that on the basis of excluding a waste disposal site, he was not prepared to accept or support that amendment. I would suggest that we go one further then, because I think his assistant there suggested that a transfer station could still be a problem. I would suggest that the amendment be amended further, that it would exclude either a waste disposal site or a transfer station, which would address the concern that has been expressed to us. I put it forward on that basis.

The Chair: Just so the Chair understands, Mr Johnson, you are making a motion to amend Mr Tilson's amendment?

Mr David Johnson: That's right.

The Chair: Would you like to read that into the record then?

Mr David Johnson: Yes. Clause (b) would read:

"An approval issued under the Environmental Protection Act, the Environmental Assessment Act or the Ontario Water Resources Act, for"—now I would delete the words "a waste disposal site or" so it would read—"a waste management system, excluding a waste disposal site or a transfer station, within the meaning of part V of the Environmental Protection Act."

I'm doing this on the spot.

The Chair: Have we got that written out, Mr Johnson?

Mr Lessard: Actually, I think legally that accomplishes the exact opposite of what you think it does.

Mr David Johnson: All right. I'll have a look at it.

The Chair: Could we just get the precise wording so that we can debate Mr Johnson's amendment to Mr Tilson's amendment. Mr Johnson, would you like to speak to it while we're getting the wording finalized?

Mr David Johnson: The main purpose here is that there are a number of waste management facilities that the private sector will be involved with and they are fully content to go through the public process for them, but the question comes up: How many times do you go through

this public process? Once you've gone through it, once you've met all the rules, abided by all the rules and regulations that are in place, then you should be able to go ahead.

1130

The government is not accepting this because it has concerns with landfill sites and transfer stations. That's the message I've heard from the parliamentary assistant. So I'm saying take them out and have Mr Tilson's amendment applied to all other waste management facilities but not to landfill sites or transfer stations. That's what I'm trying to accomplish.

Mr Tilson: In the spirit of compromise.

Mr David Johnson: In the spirit of compromise. That addresses Mr Wiseman's concern, and I think it addresses the concern that's been expressed by the parliamentary assistant.

The Chair: Are there further questions, comments or amendments to Mr Johnson's amendment to Mr Tilson's amendment?

Mr Tilson: Speaking to the original amendment—

The Chair: We're speaking to Mr Johnson's amendment.

Mr Tilson: I will have an opportunity to speak to my amendment, will I?

The Chair: Yes. Further questions or comments or further amendments to Mr Johnson's amendment?

Mr Wiseman: I do not support this amendment, because fundamentally I believe that groups and people should have reasonable access to being able to challenge outdated certificates of approval or outdated instruments and that communities that are experiencing the negative effects of what the rest of society holds as being good or beneficial results of some activities should have the opportunity to challenge this, to challenge what is happening in those facilities and to cause instruments to be changed or certificates to be changed in the future. They should have the opportunity to challenge and to make sure that state-of-the-art technology is being used, that state-of-the-art techniques are being used, and they should have and should be able to make sure that there is a constant re-evaluation of the standards by which these negative effects are measured.

I will give you some examples. The tritium level in water standards in the United States is 780 becquerels per litre. That doesn't mean much to anybody. In Canada, it is currently 40,000 becquerels per litre. The AECL wants to reduce it to 7,800, which is still too high by some standards.

If this amendment were to go through, what recourse would my community have to challenge that, given that downstream from the nuclear power plant will be the intake pipe for the new water treatment plant in Ajax? What recourse do my residents have to challenge the standards of the Durham-York sewage treatment system that is in between the intake pipe and the nuclear power plant, and that coming out of that sewage treatment pipe is the leachate collection system from the Keele Valley landfill site and the Brock West landfill site?

My community—let me make this perfectly clear—suffers more of the negative aspects of what the rest of the community in that southern Ontario region benefits from than any other community, and there is no circumstance in which I will allow this kind of protection to be watered down in terms of this kind of amendment. So I will be voting against this amendment.

The Chair: Mr Wiseman raised a question of fact that the Chair would like to clarify. You discussed tritium, which is a federal responsibility. I think the committee members would all like to know from the ministry how the EBR affects that particular issue, just for clarification.

Mr Wiseman: Water quality standards are a provincial responsibility.

The Chair: Could somebody from the ministry please clarify how that particular issue is dealt with under the EBR?

Mr Lessard: The Environmental Bill of Rights only applies to provincial statutes, policies, regulations and instruments, so if something is regulated federally, it's not going to apply.

Mr Wiseman: The standards are, but the regulation of the water quality standards, which is probably what I should have said, in a broader sense is a provincial jurisdiction. There are a whole lot of water quality standards, regulations, that are in effect that I hope could be challenged under this. If not, I'd like to strengthen this section.

Mr Lessard: If they're provincial regulations, they are subject to the bill.

The Chair: Is tritium, for example, then governed under water quality standards in the province?

Mr Shaw: Speaking specifically to tritium, there's a provincial drinking water objective for tritium, and thus it would fall inside the broad definition of a "policy" in the Environmental Bill of Rights, and policies may be subject to review under the Environmental Bill of Rights.

The Chair: Further discussion on Mr Johnson's amendment?

Mr Offer: Just on the same general point, we heard in the committee that Ontario Hydro, and all of the things that emanate from Ontario Hydro, are outside of the Environmental Bill of Rights, it being a crown agency. Is it possible for someone under the Environmental Bill of Rights to question the exclusion of Hydro or any of Hydro's policies as being wrong in an environmental sense and that it should be included?

Mr Shaw: To try to clarify how the bill deals with ABCs in general, a policy made by a ministry or minister which affects one of its ABCs is subject to the provisions of the bill. As an example, if the Minister of Consumer and Commercial Relations made a policy statement with regard to the Liquor Control Board and it was an environmentally significant statement, it would be subject to the provisions of the bill. A policy created by an ABC is not subject to the provision of the bill.

For all instruments that are prescribed that are issued to an ABC—as an example, Pickering and Darlington nuclear generating stations both have permits to take

water and certificates of approval for discharge, both of which are proposed to be prescribed instruments—the bill covers those instruments and would apply to those instruments. As well, the component of the bill which deals with investigations applies to ABCs, and the component of the bill which deals with suits also deals with ABCs.

Mr Offer: It raises a number of other questions, because we have the creation of new corporations, the sewer and watermain corporation and a variety of other corporations, which will be doing a number of things. They will, as of their own right, be applying for approvals and things of this nature. It's my understanding from your response that those things to which they apply in the potential construction of sewers and watermains would not fall under the Environmental Bill of Rights.

Mr Shaw: If I can clarify that, and let me go back to Hydro as the example, Hydro needed for the Darlington nuclear generating station a permit to take water. That permit to take water is subject to the request-for-review provisions under the bill. If, by the same token, the new clean water agency needed a certificate of approval to construct a sewage treatment facility, then the provisions of the bill that apply to instruments would apply to that instrument that corporation had asked for, just as it applies to the private sector ones.

1140

Mr Offer: There was the point made that the bill does not apply to agencies.

Mr Shaw: It does not apply to policy statements by agencies.

Mr Offer: So if Ontario Hydro issues a policy statement which the people of this province feel is detrimental to the environment, if the sewer and watermain corporation issues policies and policy statements as to what it's going to do which people do not feel are in the best interests of the environment, they cannot challenge that.

Mr Shaw: They could not ask for a review of them under this bill.

Mr Wiseman: I would just ask for a slight clarification on that. Are you saying that the policy statement itself cannot be challenged but that the policy implementation could be, that if they were to try to implement a policy under some regulation, that would be challengeable?

Mr Lessard: Only if the implementation involved obtaining certificates, a permit or something of that nature, to carry out the work.

Mr Wiseman: Would they then not also be challengeable under section 38 of the Environmental Protection Act and the director's orders with respect to cleanup, or is that just simply a waste management section of that act?

Mr Lessard: Could you repeat that?

Mr Wiseman: I hope. Would they be challengeable under the other parts of the Environmental Protection Act, and in particular sections that reflect the same intention as section 38, where it says that if there's harm to the environment, the director may act?

Mr Lessard: Yes.

Mr Wiseman: Thank you.

The Chair: Mr Tilson, speaking to Mr Johnson's amendment.

Mr Tilson: Continuing with this, what I was trying to think of, and I can't, really, is what proceedings could be undertaken—I'm thinking of proceedings by the clean water agency, Hydro and other corporations—that wouldn't require an application for something but which would follow through with their policy statements, to which this bill would not apply, and yet might contravene the policy statements of a particular ministry.

Interjection.

Mr Tilson: That seems quite likely. My question is to Mr Shaw.

Mr Shaw: If there was a contradictory policy statement, and I think that's the issue you have raised, what the bill provides for is that if two members of the public feel there is a need for a new policy in order to protect the environment, they may make such a request through the Environmental Commissioner to the respective minister. As an example, if Hydro came out with a policy statement which was viewed to be negative to the environment, it would be possible for two people to ask the Minister of Environment and Energy to consider the need for a new policy.

Mr Tilson: But it would have no effect on the crown agency.

Mr Shaw: Crown agencies are generally governed by the policies of their parent ministry.

Mr Tilson: I don't think so. You'd have to amend the legislation. The policies might be quite different. Hence, the bill of rights really is meaningless in this particular area.

Just some comments with respect to Mr Johnson's amendment; in fact, my comments apply to Mr Johnson's amendment and to my amendment, and some remarks that were made by Mr Wiseman with respect to matters in his riding.

I don't know whether what you're saying is correct or not, and for the moment will assume it is. What I'm looking at is that if you've got a process that's flawed. Obviously, I'm going to refer to the IWA process and Bill 143; I always look forward to your challenging me on that one. If you have a process that's flawed, why wouldn't you want to fix that process under the existing legislation instead of creating another process and another system that might come to a different result with a different set of bureaucrats, with an additional cost?

I look at the cost the IWA has encountered to date. They're talking—I don't know whether it's true or not, whether it's higher or lower—in the neighbourhood of \$50 million to \$51 million and climbing. Look at those very expensive processes. And that has nothing to do with the processes that corporations, whether it be Laidlaw or anyone that these processes apply to; very expensive, time-consuming processes. It means jobs; it means a whole slew of things. We want to make sure they're doing these things properly so that they meet the environ-

mental process, and we have a process that's set up.

If it's wrong, if it's flawed, why don't we fix it? Why do we make these people go through another process? Because that's what is believed by the different groups I've referred to. They predict that's what's going to happen, and I haven't seen any evidence or any facts that would contradict that. They go through one process and then all of a sudden they've got to go through another process because two people at the other end of the province don't like it.

Mr Wiseman: They don't necessarily have to go through it again.

Mr Tilson: I'm sorry, but that's what the bill of rights gives to people over the age of 18, the right to put them through it. That's exactly what the bill of rights gives them, and that's why these amendments are being made. Mr Johnson has put forward an amendment in a spirit of compromise because we feel there should be some attempt to reduce the potential of duplication. You obviously don't like the amendment I proposed, so Mr Johnson has proposed another one.

Mr Wiseman: It's not just the amendment. We fundamentally disagree on the principle. I still believe that in five or 10 years or two years or three years or whatever, if the certificate of approval is being violated or if the certificate of approval should be updated to have a new technology or a new process put into place, that should happen. Currently it doesn't happen. The other thing I'd like to point out is that with this amendment the IWA will not have to subject the certificate of approval to a review process.

Mr Tilson: If you want to get into the IWA, I'd love to get into that, because you know it's a flawed process; you know the people basically have no rights. If you want to get into a debate about the dumps, I'd be pleased to do it, because you're wrong, and you know you're wrong.

Mr Wiseman: No, I'm not.

Mr Tilson: I'm talking specifically about this bill. You know this bill doesn't apply to the IWA, and I tell you we would fix this IWA process. We'd can Bill 143, we'd can the IWA, and we'd start with a process that's going to work.

1150

I'm getting to the two amendments that are before this committee. I'm simply saying that if you've got a process that's not working under an existing system with an existing set of—it's very expensive to run these systems, and they're needed. I'm not—

Mr Wiseman: Brock West is making huge profits—huge—and they do nothing.

Mr Tilson: I can't debate your particular example because I'm not knowledgeable about it. Obviously, I will be becoming more knowledgeable about that topic, because I look forward to debating.

I'm simply saying that you don't fix a problem by creating another set of bureaucracy. If you've got a problem, you fix it. You don't create duplication, and you haven't denied that's what you're doing. You're creating duplication with this bill in certain matters. For the

umpteenth time, and I appreciate we're getting into repetition, that is the reason and the rationale behind this amendment. We're trying to avoid duplication.

We feel that if you repair these pieces of legislation—I'll admit that Bill 143 has created problems, and that will be rectified, I can promise you. But there may be other flaws dealing with the situation you have raised in your specific riding, and it may mean that existing pieces of legislation need to be repaired.

What we're trying to do is to avoid going through a process under these various pieces of legislation, the Environmental Protection Act, the Environmental Assessment Act and so on, and then have to go through a similar process with the environmental bill because two people from the other end of the province object to something, when perhaps what should be done is amending the existing pieces of legislation. This process you're creating is a very expensive process, and I would hope, particularly in these times of restraint, that you want to provide fairness to the public, to give them rights, but at the same time at the minimum cost to the public.

With what you're doing with the duplication, not only to the government but, more importantly, to the people who are creating jobs in this province, whether it be the Laidlaws and all the people under the various applications, they're very concerned. They're concerned about duplication, job losses, costs to their company, whether they can perform in the future because of overregulation that will be created by the bill of rights.

The Chair: Is there further discussion on Mr Johnson's amendment to Mr Tilson's amendment?

Mr Lessard: In the event that there isn't a change in government and therefore you don't have the opportunity to amend or repeal Bill 143, you might be able to resort to the provisions of the Environmental Bill of Rights to ask for a review, and that might lead to an amendment, by referring it to the Environmental Commissioner. That would be a right you could have.

There is an attempt in the bill to avoid duplication, and that's in sections 30 and 32. Specifically, the minister doesn't need to place instruments or policies or regulations on the register and therefore be subject to the provisions of the bill if these things have already been considered in a process of public participation or are required to be considered in a process of public participation. That would mean that if there is a public process that's provided for in some other place, they wouldn't need to be placed on the register.

Section 32 also refers specifically to decisions that have been made under the Environmental Assessment Act. Clause 32(1)(a) refers to decisions that have been made by tribunals under an act, and that could refer to decisions that have been made after appeal to the Ontario Municipal Board, for example. Those provisions are provided specifically to avoid duplication of process.

Mr Tilson: To respond briefly to Mr Lessard's last comment, dealing specifically with sections 30 and 32, I'd like to take the example that was provided in the Ontario Waste Management Association's paper and presentation. They talked about certificates of approval for,

for example, matters involving the 3Rs. It seems to me they go through making an application for approval of a 3Rs facility and obtain that under the existing legislation.

Then we look to Bill 26, sections 30 and 32. I emphasized in my comments during questioning of specific delegations the terrific discretionary opinion that the minister now has with Bill 26. The minister may not have been satisfied, may not have liked the existing process it went through, notwithstanding the fact that it was a fair process that went through a proper hearing, through an independent group of people, and it was decided that a particular facility should be granted.

So two people from another end of the province come along and say to the minister, who doesn't like it because he or she may have been contesting that particular application, for some reason—I appreciate I'm creating a hypothetical situation, but it's that minister's opinion, which can work both ways. The minister says, "Well, I'll fix them," and simply says, "I agree with you two people over 18 and we're now going to put the people who are applying for a 3Rs facility through a similar process under Bill 26."

So sections 30 and 32 do say it's in the minister's opinion and provide that discretion, but that discretion could be mischievous or it could be genuine and could indeed create problems to a system which an applicant has already gone through, a proper system that is already existing in which an independent body has determined and approved a particular facility.

I emphasize that, for any number of reasons, what you're doing here is creating the potential—and I know there are sections in the bill that talk about frivolous applications, but the fact of the matter is that it's conceivable that someone goes through a particular application and then for whatever reason, "in the minister's opinion," they can go through it again. That's the reason for the amendment. I challenge Mr Lessard on his reference to sections 30 and 32.

The Chair: Are there further questions, comments or amendments to Mr Johnson's amendment to Mr Tilson's amendment? If not, shall Mr Johnson's amendment carry? All in favour? Opposed?

Mr Johnson's amendment is lost.

Mr Tilson's amendment is now on the floor. Are there further questions or comments to Mr Tilson's amendment?

Mr Tilson: I have a question to legal counsel, which I tried to alert him on. If you go through a process under a particular piece of legislation, whether it be the Environmental Protection Act or some other similar legislation, and that reaches a certain result, and then we go through a process under Bill 26 which reaches a different result, doesn't that create a bit of a legal mire?

Mr Jim Jackson: There are several different processes provided under Bill 26. The only two that could possibly reverse it don't include the review procedure. They include an application to appeal and an appeal, in the case of Ministry of Environment and Energy statutes, to the Environmental Appeal Board. There, if that application for leave to appeal is granted, you won't have

reached the end of the process yet. So you're not at the end of the process and then having the decision reversed; you're still in the process.

The other remedy that could have the effect of reversing an earlier decision would be the suit—

Mr Tilson: The civil suit.

Mr Jim Jackson: The civil suit. But that only arises or can only arise if there's been a contravention of the statute. Once there's been a contravention of the other statute, not the Environmental Bill of Rights but the Environmental Protection Act or whatever the other statute happens to be, I don't think we're in a position of somebody having an approval and having reached the end of a process and having abided by it and then having it upset on them.

Mr Tilson: My real question is that you go through a process by an independent tribunal to reach a legal decision, quasi-administrative or whatever it's called, that you reach a legal decision and then essentially it could be overturned or stalled by a commissioner.

Mr Jim Jackson: By an appeal. No, the commissioner doesn't have the right to stall anything. The minister conducting a review doesn't result in a stay of anything. If a person has an approval, he can proceed.

Mr Tilson: As I see it, someone makes an application for one of these facilities, for example, and they get their approval. Do I—

The Chair: Mr Tilson, we will have to adjourn and take up this stimulating discussion at 3:30 this afternoon.

The committee recessed from 1202 to 1536.

The Chair: The standing committee on general government will come to order. This morning, before we were called to a vote, we were discussing Mr Tilson's amendment to subsection 1(1).

Mr Tilson: I was asking a question of legal counsel and I'd like to continue with that process, if I could, if legal counsel could come to the front.

The Chair: For the purposes of Hansard, would you identify yourself, please.

Mr Jim Jackson: M.B. Jackson, legal counsel, Ministry of Environment and Energy.

Mr Tilson: Mr Jackson, you partially answered my question, but I'd like to have that clarified. We took the example of an application for a facility under one of the pieces of legislation that's in the amendment. That facility makes a decision. Then two or more people over the age of 18 decide to exercise their rights under the Environmental Bill of Rights and they start going through a process.

I guess the first question is, is the Environmental Bill of Rights able to come to some sort of result either through civil proceedings or some action of the minister? You indicated the commissioner could not, but is there some way as a result of proceedings that would be taken under the Environmental Bill of Rights by citizens that could overturn or modify or have some effect on a decision that was made by a tribunal?

Mr Jim Jackson: Yes. You started by referring to any two persons. That's the number of people who can

apply for review of a policy, act, regulation or instrument. The carrying on of that review does not stop anything from happening under the instruments that have already been issued. After the review is completed, the minister or his delegate has to inform people of the conclusion of the review.

If you were talking about something happening immediately after this other approval process had been completed, it is quite likely that the minister would determine that a review was unnecessary, because one of the criteria for determining a review is unnecessary is that it is a review of a decision made during the five years immediately preceding the request for review.

Mr Tilson: Although the minister, in deciding on those sections, does have the discretion if he or she feels very strongly. Notwithstanding what that says, he or she could have the discretion to ignore that decision.

Mr Jim Jackson: You mean and carry out the review anyway?

Mr Tilson: Yes.

Mr Jim Jackson: Yes, the minister would have to determine that there is social, economic, scientific or other evidence that could result in significant harm to the environment and that particular evidence wasn't taken into account at the time of the original decision. The result of the review itself doesn't interfere with continued actions under the instrument. The person who has the instrument can still continue to act under it.

Mr Tilson: The whole principle is a tort.

Mr Jim Jackson: What could happen as a result of a review is that the minister or the delegate could determine that an approval ought to be revoked if there's an authority in the original statute that authorizes such action. Under the Environmental Protection Act approvals can be revoked if the statutory grounds provided in those statutes are met.

Mr Tilson: Yes. As well as that, it would seem to me that the principles of nuisance and tort will have been expanded as a result of Bill 126 with respect to an individual's rights and they too could bring action and conceivably make an application for and possibly obtain an injunction. My difficulty is, I'm trying to create some hypothetical situation and I don't know of any.

Take the example that Mr Johnson referred to this morning, I think in one of the papers—whether it was a Laidlaw paper—of someone applying for a facility and a government and/or citizens feel very strongly and object to a decision that's been made. It seems to me there are two options.

One could go through and the minister and/or the citizens could stop the proceedings by obtaining a court injunction to stop the proceedings while the process under the environmental bill is under way, notwithstanding a decision that has been made under one of those pieces of legislation and referred to in the amendment. Secondly, it would seem to me that after that process the individuals could then go to court. They may have good grounds; they may not have good grounds.

I guess the principle of this whole thing—

Mr Jim Jackson: You've already got them into court. Maybe I'm misunderstanding.

Mr Tilson: The only way you have them into court is with respect to obtaining an injunction, and I'm not even so sure they can obtain that. I'm assuming they can.

Mr Jim Jackson: Where a person has contravened or will imminently contravene an act, yes.

Mr Tilson: Yes, I'm there, but I'm also in the process simply of the bill, of having the review. Is the person—

Mr Jim Jackson: Yes, but that's a different part of the bill. You don't get injunctions in that other part of the bill.

Mr Tilson: I'm trying to separate them. You're right. I'm trying to separate them. I guess my point is that the Ontario Waste Management Association, Laidlaw, AMO, the three main ones that came before the committee, are right that the potential of duplication is there because of court challenges or delays or otherwise, which in the past—and I'm not asking you a question, I'm making a statement. It's unfair of me to ask you if it's a policy question, I suppose. I would like to. I'd love to—

Mr Jim Jackson: The bill has been drafted in order to not entirely eliminate but greatly reduce any possibility of duplication because you have to cross over hurdles. In the case of the review, for example, one of the hurdles is that it not be a recent decision unless that ground we were talking about is satisfied.

Mr Tilson: In the discretion of the minister.

I believe the point has been shown, the concern of duplication, by three groups. AMO, the Ontario Waste Management Association and Laidlaw—there may have been some others—all said the same thing, the fear of duplication. It may be remote, it may not be remote, but the fact of the matter is it's there.

That is the purpose of the amendment, to stop or reduce potential duplication. Members of the public have their rights under these existing pieces of legislation. Mr Wiseman has given a number of examples in his own personal experience, his own riding, where some of the legislation may be faulty. I would say, if that is the case, those pieces of legislation should be changed, if what he says is true, not creating another bureaucracy that's going to end up duplicating an already very thorough system and hence creating uncertainty.

There's no question, to do things in this world—just to pick on Laidlaw, because they are one of the ones that made the application, they have to get funding together. They have to get moneys together to do things. They have to have some sort of certainty as to what they're doing. If they know they may have to go through two hearings or two processes, not necessarily hearings but two processes, very expensive processes that could be time-consuming, and time is money, they won't like that. People who work for them won't like that or what they're trying to do.

I would just ask the government members that if they don't like this amendment, they at least stand this provision down. I don't care if you think of something else, but at least consider some effort to stop or reduce the duplication that I believe has now been admitted by

counsel for the ministry.

Mr Offer: Just to carry on on this point, and I appreciate counsel's answers to the questions, under the EPA there is a process whereby approvals can be reviewed and revoked, I would imagine. Under the Environmental Bill of Rights as proposed, there is also a process in which approvals can be reviewed and potentially revoked.

Mr Jim Jackson: No.

Mr Offer: They cannot be revoked?

Mr Jim Jackson: No. What could happen as a result of the review under the Environmental Bill of Rights is that it draws to the attention of the person who has the jurisdiction under the other statute to revoke an approval that he should commence applying the process under the other statute.

Mr Offer: I just have to get this clear in my mind. An individual wishes to have an approval reviewed. The approval is so reviewed under the EBR, which triggers another process potentially under the EPA which might result in the revocation of that approval.

Mr Jim Jackson: Yes. That process under the EPA can be triggered by the EBR or any one of a number of other ways.

Mr Offer: That was my next question, but that process can also be triggered directly through the EPA or a variety of other ways.

Mr Jim Jackson: Yes.

Mr Offer: I'm envisaging a fork and I see a number of prongs going down to the same stem. One is the EBR, one is the EPA, a variety of other things, going down to the single stem of revoking this, whatever the decision may be.

The question is, if that is the case, and I think that would be the case, are there different standards for each of the different pieces of legislation, and if there are, is someone excluded from using those other standards if the first route that they take they fail?

1550

Mr Jim Jackson: The standard for revocation will be the standard that is in the act the instrument was originally issued under.

Mr Offer: Let me, then, in my question be more blunt. If two individuals attempt to use the EBR to have a particular decision reviewed and/or revoked under another piece of legislation and they fail—it's decided by the minister that the criteria just were not met—can they then go under the EPA? Are they stopped from taking another route if the first one has been unsuccessful?

Mr Jim Jackson: Just as in the present case, they can take whatever routes they want.

Mr Tilson: There's a choice.

Mr Offer: Mr Tilson mentions choice, and that's correct. It's try the A route, and if you're not successful, then you'll try the B route, and if you're not successful, then you'll try the C route, and if you're not successful, then you'll try the D route.

The question that we have to ask in the committee in terms of this matter is, is it proper that a person, first,

have the ability to take a route? I think we would all agree yes. But the second question is, if that is the case, should we give every individual the ability to continue on different routes even if they are met with a negative response each and every time? I'm just trying to figure out the fairness of this thing.

Mr Jim Jackson: There are many routes available at the present time. "Many" is perhaps an exaggeration. However, if people are trying subsequent routes, the people those routes run through usually pay attention to the fact of what has gone on before, and it becomes easier for them to deal with a matter quickly, unless somebody has come up with new information or circumstances have changed over a period of time.

Mr Offer: Yes. I appreciate the response. There are just so many other questions that should most properly be asked in this matter, especially around section 68 and what follows. Thank you.

Mr David Johnson: Maybe to give a specific case then, since we're talking about cases, let's deal with a case that's before us in this morning's paper.

Mr Jim Jackson: I haven't read this morning's paper yet. I've been busy.

Mr David Johnson: Let me describe it to you. The Toronto Transit Commission has had numerous public hearings. They've had an environmental assessment document that's filed with the Ministry of Environment with regard to the Sheppard subway, the creation of the Sheppard, and the Scarborough RT.

The paper says it's part of Premier Bob Rae's "major job creator" and, to quote the paper, it is "now threatened with delays by environmentalists," among others.

It quotes here an Anne Woodsworth, who is—

Mr Jim Jackson: I'm familiar with her.

Mr David Johnson: You're familiar with her. Well, according to Anne Woodsworth, "Scarborough and Sheppard 'are two of the lines the government would like to see a shovel in the ground soon...next year.'"

Then it comments on a Mr Serge Bastien.

Mr Jim Jackson: Yes, I've heard of him too.

Mr David Johnson: You've heard of him too. It quotes him as "the provincial official who is reviewing the environmental assessment documents prepared by the Toronto Transit Commission in support of the project," and he says that he'll try to resolve the issues. But he goes on to say that it will take several months before they could get a hearing. I don't know how long the hearing would take if you did have one, but those hearings usually take years rather than months.

If these groups are successful in getting an environment assessment review of the Sheppard line, then obviously it's going to be some considerable period of time before that project goes ahead. If during that process they're unsuccessful in stopping it, would they then be able to invoke the Environmental Bill of Rights either after that process or at the tail end of that process? What would stop them from invoking the Environmental Bill of Rights and starting another process in place to delay the project even further?

Mr Jim Jackson: What you have said indicates that an environmental assessment has been submitted by the TTC or Metro. It's in the process of a review being prepared. Perhaps the minister has issued a notice of completion of the review, I don't know.

The next step would be for the minister to consider comments that were received as a result of that notice and then decide to either accept or amend and accept the document, the environmental assessment, as being a reasonable basis on which to make a decision with respect to whether the work should be approved. Then he would determine, with the approval of the Lieutenant Governor in Council, whether the work should be approved.

So we're assuming we've got through to that stage, either one of those two decisions I mentioned for the minister to make: acceptance of the document or approval of the work. It could have gone over to the Environmental Assessment Board for a hearing there. We assume the minister's either approved it or it's gone through an Environmental Assessment Board hearing and the Environmental Assessment Board has approved the work.

The bill of rights provides that the decisions that are made under the Environmental Assessment Act and the sort of little decisions that get made after that to implement the environmental assessment decision are not instruments that are subject to the appeal process.

In connection with the review process, somebody could think up a question that would fit under the act, but the minister would be faced with the provision of the Environmental Bill of Rights that says if you're asking for a review of a decision that has been made within the previous five years, it won't be done unless one of those things happens.

If somebody could dream up a way of doing it, it could be dealt with quickly and the original decisions and the outcome of them confirmed by the minister, assuming it's the Minister of Environment that it's referred to, determining it's a recent decision and therefore ought not to be reviewed further.

Mr David Johnson: This is the scenario that I'm a little bit worried about: Suppose that, as you say, this document goes before the minister; the minister has the Better Transportation Coalition indicating we must have an environmental assessment, he has Energy Probe saying we must have an environmental assessment and he has several individuals who apparently call themselves environmentalists.

Mr Jim Jackson: There is an environmental assessment. So it's not a matter of there must be an environmental assessment; there is one.

Mr David Johnson: All right. Well, there seems to be some doubt here.

Mr Jim Jackson: I think people are probably using their terminology differently.

Mr David Johnson: I'm talking about a hearing.

Mr Jim Jackson: You're talking about a hearing; that's different from an environmental assessment.

Mr David Johnson: A hearing, that's right. I'm sorry.

All right. So there must be a hearing, let me say that. These people are saying there must be a hearing and the minister, with the information, wanting democracy to rule the day, says, "All right, we'll have a hearing."

Mr Jim Jackson: He's got some statutory responsibilities under the Environmental Assessment Act. He can determine that the requirement for a hearing is frivolous and vexatious.

Mr David Johnson: They don't do that very often, though.

Mr Jim Jackson: I assume that's not going to be the case. They'll have legitimate reasons for requiring one. He can also determine that a hearing would cause undue delay and make a decision instead of referring it to a hearing.

Mr David Johnson: That's dangerous ground, though.

1600

Mr Jim Jackson: Maybe it is, maybe it isn't. It would depend on the circumstances of the particular case. He can also determine that the issues that are provoking the requests for a hearing have already been adequately dealt with and therefore a hearing is unnecessary. Therefore, you don't need to have a hearing about the whole thing because the issues have already been dealt with.

Mr David Johnson: Right. All of that's possible, but it's quite within the realm of possibility that he could choose to go ahead with the hearing and then the hearing would take—I don't know how long a hearing would take—

Mr Jim Jackson: Months.

Mr David Johnson: —months to schedule it.

Mr Jim Jackson: You said years rather than months. I think it's months, but it's probably many months.

Mr David Johnson: Many months, so we're certainly beyond next year in terms of getting a shovel into the ground, as Anne Woodsworth has indicated, if we go through an environmental hearing. All right then, whatever period of time that takes.

Suppose that is completed and concluded and suggests that the project should still go ahead. The door is still open, as I understand it, for members of this coalition of Energy Probe and the environmentalists who are involved to say, "The hearing did not consider these social and economic concerns that we have. We've put these forward, but they didn't understand them," or "There are a few new ones that we have thought of since the hearing. We have these concerns and we are invoking the Environmental Bill of Rights and we want a review under the Environmental Bill of Rights," notwithstanding that they've still had the hearing. That's a possible scenario. You're saying that—

Mr Jim Jackson: That's a possible scenario, that review being requested under the Environmental Bill of Rights or being carried out under the Environmental Bill of Rights doesn't prevent the TTC from continuing to act in accordance with the approval it got.

Mr David Johnson: It doesn't, but they're doing so against the risk that the Environmental Bill of Rights

process could determine that there is some problem, could uphold the groups, could implement certain measures that cause great difficulties in the plans that the TTC has rendered. But it's one more possible step in there. You may say there's some likelihood that it would happen or wouldn't happen, but at least it's possible that there could be that one additional step.

Mr Jim Jackson: Yes, it is possible.

Mr David Johnson: I think that's the concern that AMO's expressing too with regard to some of the municipal planning, and I think that's the concern that the Ontario Waste Management—

Mr Jim Jackson: That's not a new concern. Most large municipal undertakings require approval by the Ontario Municipal Board, and the Ontario Municipal Board Act, since it was passed in the last century, has had a provision in it that enables people to apply to the Ontario Municipal Board to review their decisions at any time. It hasn't interfered with the municipalities' ability to undertake large projects.

Mr Wiseman: I'd like to go down this route just to make sure I understand the process. If an undertaking is being put forward and suggested by a municipality, it usually runs an ad in the newspaper. That's either required by bylaws or just out of protocol. I think there's also something in the Planning Act and the Municipal Act that requires that they do this ad. Am I correct?

Mr Jim Jackson: It's subject to the Environmental Assessment Act, if he wants any hope of getting through to the end of the process, a proponent is going to carry on public consultations and publish advertisements before he submits his environmental assessment to the minister.

Mr Wiseman: Having placed the ad, then all the concerned citizens who would like to participate in the process would be brought together with the proponent and would discuss the plans, the process and the issues. Am I correct?

Mr Jim Jackson: Yes.

Mr Wiseman: At those meetings, they would be asked—actually they're negotiations, if my experience has anything to do with this—to sign off on the things that they all agree to. In so doing, then you can put that particular issue to rest and you don't need to worry about further complications. If somebody doesn't agree at that process, it is their right to request a full environmental assessment hearing.

Mr Jim Jackson: If the matter is subject to the Environmental Assessment Act, yes.

Mr Wiseman: I don't know if it's a colloquialism or whatever, but it's usually referred to as a bump-up.

Mr Jim Jackson: It's referred to as a bump-up when somebody is proceeding under a very general type of approval they've received under the Environmental Assessment Act. For a class or a group of undertakings, then the individual project can be bumped up, yes.

Mr Wiseman: Okay. They request that.

Mr Jim Jackson: Yes.

Mr Wiseman: At that point the minister will be asked to review it and to say either, "Yes, we are going to go

to a full environmental assessment hearing," or say, "No, we're not."

Mr Jim Jackson: That's right.

Mr Wiseman: If the ministry decides that it doesn't want to go to a full environmental assessment but that there are still outstanding issues, it can go to the Environmental Assessment Advisory Committee, ask it to make an investigation and give a time period and ask it to make suggestions. Is that correct?

Mr Jim Jackson: Yes. Sometimes staff members such as Mr Bastien, who was mentioned, may try to resolve things at an early stage before they get to the formality of an EAAC review. If that fails, then it can be referred to the Environmental Assessment Advisory Committee.

Mr Wiseman: Up to that point, a lot of people have been involved in that process and really there is no cost involved or relatively little cost involved except for time on the part of the participants, and perhaps there's some money on the part of the proponents to pay for people to come to evening meetings. But it's not really an expensive process up to this point.

Mr Jim Jackson: No. The EAAC process itself is very informal.

Mr Wiseman: There can be recommendations, say 10 or 15, and, "Fulfil all of these and then you can go ahead."

Mr Jim Jackson: It doesn't often get that far, but when it gets that far that kind of outcome is not unusual.

Mr Wiseman: At this point everything will be done under the Environmental Protection Act and under the Environmental Assessment Act or the Planning Act or the Municipal Act or one of these acts.

Mr Jim Jackson: Yes.

Mr Wiseman: If the issue can be resolved, it will be resolved there.

Mr Jim Jackson: That's right.

Mr Wiseman: We've heard from a large number of environmental groups which have said, "We really don't have the funding and we don't have the inclination to go that far, to take it to court, to environmental assessment." So how likely is it that the next point is to go to a full environmental assessment hearing?

Mr Jim Jackson: If they do go to a hearing under the Environmental Assessment Act, intervenor funding will be available under the Intervenor Funding Project Act. However, that doesn't pay all the costs of a party, so it'll still have a significant financial outlay that it'll have to make in order to do that.

Mr Wiseman: Last question: Under the Environmental Bill of Rights, after all of that has taken place, they can ask the minister to review the decision, review the law and ask for a different policy to be created. What will the Environmental Bill of Rights give them the right to ask for after that whole process has gone through? Can they ask them to do it all over again?

Mr Jim Jackson: No.

Mr Bernard Grandmaître (Ottawa East): Is there an appeal process?

Mr Tilson: No.

The Chair: Order.

Mr Wiseman: In other words, they can ask the minister to review the law or the regulations and ask for new ones.

Mr Jim Jackson: That's right.

Mr Wiseman: But they cannot go back and say, "Minister, we want you to do the full environmental assessment over again."

Mr Jim Jackson: No.

Mr Wiseman: They can say: "This item within the certificate of approval doesn't comply with current regulations. We'd like you to take a look at it."

Mr Jim Jackson: If it didn't comply with the law, they could ask the minister to enforce the law, yes.

Mr Wiseman: At the end of the day, if the environmental group cannot convince all of these people that its position is right, my guess is that it won't be going to court; my guess is that it will feel it won't win and it won't go to court. I just wanted to get that process out. I'd really like to move along now.

1610

Mr Offer: Following up on this last series of questions by Mr Wiseman, if that so-called group were rejected after going through all of that process, could it use another process to do the same thing?

Mr Jim Jackson: I don't know. People have obstructed roads and—

Mr Offer: No, I don't mean that. I don't mean it in that way. Can they use another piece of legislation possibly to restart the whole process again?

Mr Jim Jackson: It's difficult to answer that question in the abstract.

Mr Offer: I understand that.

Mr Jim Jackson: But generally the answer is no, there aren't any other pieces of legislation by the time you've—

Mr Grandmaître: They can't appeal to cabinet?

Mr Wiseman: Well, you can always appeal to cabinet.

Mr Grandmaître: I'm asking him the question. Thanks, Jim.

Mr Jim Jackson: There is no provision for an appeal to cabinet under the Environmental Assessment Act, but there is a similar process that is available under the Environmental Assessment Act if they can persuade the Minister of Environment that the matter ought to be brought to cabinet, because under the Environmental Assessment Act it's not an appeal process. It provides the minister can change a decision of the Environmental Assessment Board, with the approval of cabinet, within I think 30 days of the decision having been made.

Mr Grandmaître: You just said—

The Chair: No, Mr Tilson's next.

Mr Tilson: He's on a roll.

Mr Grandmaître: You just said if the minister wants to bring it to cabinet. Isn't it the responsibility of the

Premier to bring it to cabinet and not the minister?

Mr Jim Jackson: Under the Environmental Assessment Act the statutory provision in it for changing a decision by the Environmental Assessment Board is for the minister, within 30 days of the Environmental Assessment Board having made its decision, to obtain the approval of cabinet to change it. There's a bit of red tape involved in getting approval to cabinet, so there's a provision in the statute that during the 30 days, if the minister is inclined to be asking cabinet to do that, he can extend the 30-day period. But once the 30-day period is up, it's final. If the minister himself has made the decision on the approval, if there hasn't been a hearing, the minister does need the approval of cabinet to make that decision. Then there's no provision in the act for review of it. It's final.

Mr Grandmaître: And the minister has no responsibility to bring it to the attention of cabinet within those 30 days?

Mr Jim Jackson: He has a political responsibility to do what is right, and I would expect in many cases he would bring it to the attention of cabinet.

Mr Grandmaître: You would or you hope?

Mr Jim Jackson: He may get some off-the-wall, frivolous request from somebody and decide it's not worth cabinet's time to bring it to their attention.

Mr Grandmaître: So the minister can, on his own judgement, say it is frivolous, and that's it.

Mr Jim Jackson: Yes.

Mr Grandmaître: And that's the end of the road.

Mr Jim Jackson: Under the Environmental Assessment Act it's completely in the control of the Minister of Environment, subject to him having to get cabinet approval if he's making changes.

Mr Tilson: Listening to the processes that were walked through by Mr Johnson and Mr Wiseman, does the Environmental Bill of Rights provide any additional rights than what he or she already has now?

Mr Jim Jackson: It provides the right to get fully reasoned answers. Anybody can always write to a minister and ask him to review a decision anyway, but under the Environmental Bill of Rights there's a process that has to be followed and the minister has to respond with reasons to the issues that are raised in a request.

Mr Tilson: That's assuming the minister cooperates and he or she exercises his or her discretion. That's assuming that.

Mr Jim Jackson: To conduct a review.

Mr Tilson: That's right. So assuming that we have a responsible minister—

Mr Jim Jackson: If he exercises his discretion not to conduct a review, then he has to give reasons for that.

Mr Tilson: All right, but let's get back to rights, because that's what this bill's all about. Doesn't a person who's applying under the bill of rights have those same rights under the rights that were described in the process in the hypothetical situation Mr Wiseman was talking about or the factual situation Mr Johnson was talking about?

Mr Jim Jackson: He doesn't have the legal right to get full reasons for whatever decisions are made—

Mr Tilson: Wouldn't it be very simple for an amendment to be made to the existing legislation to require that?

Mr Jim Jackson: It would be very simple for an amendment to be made to the existing legislation. The Environmental Bill of Rights, however, applies to many pieces of existing legislation, so it would take many amendments to do it.

Mr Tilson: To different pieces of legislation.

Mr Jim Jackson: That's right.

Mr Tilson: At least the three that are in the proposed amendment before the committee now. How many pieces of legislation would there be?

Interjection.

Mr Tilson: Did someone say 20?

Mr Shaw: Yes, 20 pieces of legislation are currently under the bill.

Mr Jim Jackson: With the possibility of additional ones being added by regulation.

Mr Tilson: I guess, sir, it's really a response to Mr Wiseman's argument against the amendment. Couldn't you have an omnibus bill that would cover all of these acts, in an effort to avoid additional bureaucracy, to give rights to citizens of this province, to give citizens of this province additional rights under those bills without creating a very expensive bureaucracy? Perhaps I shouldn't ask that question. Perhaps it's just a question I'll leave open for the committee. It's unfair of me to ask you that. It's a question I leave open to the government members.

The Chair: I have Mr Offer and Mr Wiseman. I would remind members we're speaking to a motion concerning the definition of the word "instrument." I realize this is a broad-ranging discussion but maybe we could make sure we at least pay some lipservice to always coming back to debating that motion.

Mr Offer: Speaking directly to the amendment at hand, and especially in response to your last question, you said the difference between this legislation and other pieces of legislation is that in the EBR there is the onus, responsibility, on the minister to respond to, for instance, an application for review, which doesn't appear in other pieces of legislation unless you had an omnibus piece of legislation to deal with the 20 pieces of existing legislation.

Mr Jim Jackson: That's right. There's one other level on top of that: The bureaucracy, which may or may not be expensive, does get to report on the minister's response to the Legislature.

Mr Offer: I have a feeling that might be discussed later on. However, one of the things I see in the bill, based on your question, is that the responsibility on the minister is to give a brief statement for the reasons for his or her decision. I'm wondering why would there be the word "brief." To me, this reads that the minister's going to send the person a letter, as opposed to what I sort of envisaged as more of a real response. I just

wonder why a brief statement of the reasons is required. It's just a strange section.

Mr Jim Jackson: I wasn't involved in choosing that word. Somebody else might know why.

Mr Offer: How about staff? Do you know? No one knows why they inserted the word "brief." At least, that's what I'm hearing from the ministry staff.

Mr Jim Jackson: I assume it was chosen to indicate that somebody wouldn't be expecting something the equivalent of a long judgement from a court.

1620

Mr Grandmaître: A yes or a no.

Interjection: That's a brief answer.

Mr Wiseman: Since I am the last speaker on the list, I think my questions have been answered. I'd just like to call the question.

The Chair: Mr Wiseman is moving that the question now be put. I find that motion to be in order. All those in favour of Mr Wiseman's motion that the question now be put? Opposed? Mr Wiseman's motion is carried.

We will now deal with Mr Tilson's motion.

Mr Tilson: A recorded vote on that.

The Chair: Mr Tilson is asking for a recorded vote. All in favour of Mr Tilson's amendment to subsection 1(1), the definition of "instrument," raise your hands.

Ayes

Grandmaître, Johnson (Don Mills), Offer, Tilson.

The Chair: Opposed?

Nays

Abel, Fletcher, Lessard, Mathysen, Wessinger, Wiseman.

The Chair: The motion is lost.

The next amendment that I see is also one from the Progressive Conservative caucus.

Mr Tilson: I move that subsection 1(1) of the bill be amended by adding the following definition:

"'wetland' means:

"(a) lands that are seasonally or permanently covered by shallow water so that the presence of abundant water has caused the formation of hydric soils and has favoured the dominance of either hydrophytic or water tolerant plants, and

"(b) lands where the water table is close to or at the surface so that the presence of abundant water has caused the formation of hydric soils and has favoured the dominance of either hydrophytic or water tolerant plants,

"and includes swamps, marshes, bogs and fens but does not include land used for agricultural purposes."

Could I speak to the amendment?

The Chair: I would appreciate it.

Mr Tilson: This amendment is put forward as a result of submissions that were made to us by the Ontario Farm Environmental Coalition and the Ontario Federation of Agriculture. I think there were two or three of them here who raised this concern. In their written presentation, which I'll be referring to, on page 3, it is the contention of the Ontario Farm Environmental Coalition that a

definition of "wetlands" should be entirely consistent with the definition outlined in the wetlands policy statement which was issued in May of last year, 1992, by the ministries of Natural Resources and Municipal Affairs—a definition, I might add, that I think people in the province had been looking for for a long time.

If you will turn to the definitions section, in reference to the definition of "land," it includes "wetland" in that definition of "land." It is a submission of this group and a submission of our caucus that wetlands should be defined separately, since they serve as an important interface between traditional land and water resources.

This amendment is being proposed to obtain consistency with the policies of other government ministries, specifically Natural Resources and Municipal Affairs, and to expressly determine what does and what does not constitute a wetland, an issue which concerns many environmentalists, the whole issue of wetlands. There are books and videos and all kinds of things which many of us have seen dealing with the topic of wetlands and the concern of how they are gradually disappearing from our environment.

Just to read the definition section for "land," where wetland is mentioned, it simply says, "'land' means surface land not enclosed in a building, land covered by water (which, for greater certainty, includes wetland) and all subsoil."

That is the rationale of the proposed amendment as suggested by the Ontario Farm Environmental Coalition and our caucus.

Mr Lessard: The definition of "land" that currently appears in the Environmental Bill of Rights doesn't exclude wetland, and I would assume this would include wetlands as they are suggested to be defined by Mr Tilson.

The definition of "land" in the Environmental Protection Act doesn't specifically refer to wetlands. In fact, the definition is very similar to, if not exactly identical to, the definition in the Environmental Bill of Rights.

If we were to provide a definition of "wetlands" in the Environmental Bill of Rights, we would have two different definitions. It could be interpreted that the definition in the Environmental Protection Act is actually narrower and would thus exclude wetlands and therefore not apply with respect to the contamination of wetlands. That's not a result the government would like to see.

Mr Grandmaître: I have a question to staff members. Does that mean the ministries of Municipal Affairs, Agriculture and Food and Natural Resources all have different definitions of "wetlands"?

Mr Lessard: As far as I know, the only place where wetlands are defined is within the wetland policy.

Mr Grandmaître: When they are considering an official plan, when an official plan is being circulated, for instance, Municipal Affairs and Agriculture and Food are concerned about wetlands. My question was, is it different from the original "wetlands" definition used by Agriculture and Food and Municipal Affairs?

Mr Shaw: The Ministry of Natural Resources developed a wetland policy, and that was developed in cooper-

ation with the Ministry of Municipal Affairs, the Ministry of Agriculture and Food and the Ministry of Environment and Energy. That wetland policy is being moved as a provincial policy statement underneath the Planning Act. Therefore, that will be the single definition of "wetland" which is used by all of those agencies.

Mr Grandmaître: As Mr Tilson pointed out, they're missing two sentences. Does that mean the definition of "wetlands" is different? Why are they saying two sentences are missing? I don't have the Planning Act before me.

Mr Shaw: I'm not quite sure whether that's what they're saying. The point is that the current definition which is in the Environmental Protection Act has been interpreted to include wetlands by the courts, and that's the same definition which has been carried into the Environmental Bill of Rights.

If the Environmental Bill of Rights were to contain a distinct and different definition of wetlands, there is a risk that the definition that occurs in the Environmental Protection Act would be considered narrower and be exclusive of wetlands. Thus, the protection provided by the Environmental Protection Act for wetlands could be removed.

1630

Mr Offer: To carry on with this, under the EPA, the definition of "land" is inclusive of wetland, as you just indicate.

Mr Lessard: I can read the definition from the Environmental Protection Act, if you'd like.

Mr Offer: That would be fine, but the only point that I was making, as I've heard you and Mr Shaw indicate, is that "land" has been interpreted under the Environmental Protection Act as including wetland.

If there is a definition of "wetland" in the Environmental Bill of Rights, then it could be taken in one of two ways. The first way is an argument given to individuals under the EPA to say: "Well, look at the Environmental Bill of Rights. The government has distinguished "land" and "wetland." Hence, if we follow that reasoning, we should be doing the same thing under the Environmental Protection Act."

The other suggestion could be that the Environmental Bill of Rights containing its own definition of "land" would be construed in a narrower sense, and not including wetland.

Mr Shaw: The first supposition you put forward is definitely true. The second one was that if the Environmental Bill of Rights contains a definition of both "land" and "wetland," then it lends credence to the argument that the definition of "land" in the Environmental Protection Act does not include wetland.

Mr Offer: That's correct. To carry on, that also obviously would be the case in the Environmental Bill of Rights. However, those concerns could be dealt with if there were corresponding amendments to every section in the Environmental Bill of Rights where the word "land" occurs to also add the words "and wetland." It wouldn't get over the concern under the EPA, but it certainly would be one which would broaden the definitions of

what "land" and "wetland" mean under the Environmental Bill of Rights.

Mr Shaw: The definition, as it is currently put forward for "land" under the Environmental Bill of Rights, is inclusive of wetland.

Mr Offer: But there is no definition of how "wetland" is defined. Is there a way in which one can continue with the assumption that land includes wetland while also adding to the words "and wetland" what they do and do not mean—that is not under the EBR—without running afoul of concerns under the EPA?

Mr Shaw: I think I prefer to refer that question to legal counsel.

Mr Jim Jackson: The short answer is yes. If we reviewed the Environmental Bill of Rights all the way through and then carefully reviewed the Environmental Protection Act and the Ontario Water Resources Act and the Environmental Assessment Act to make sure that there were no conflicts or that this bill had consequential amendments in those acts, any possibility of the amendments to the Environmental Bill of Rights having an effect on the application of the other statutes could be eliminated.

I think probably the main problem with the motion is that putting a definition of "wetland" in the Environmental Bill of Rights wouldn't serve any legislative purpose. The term "wetland" is only used one place in the bill, I think, and that's in the definition of "land." The term "wetland" was put in there because of some concern by some people that perhaps "land" didn't include wetland.

It has certainly been held by the courts under other statutes to include wetland, and I think it would just lead to confusion to try and put a scientific definition in, because if we brought in seven scientists, we'd probably end up with at least seven different scientific definitions. There's no point in doing that if it doesn't serve any legislative function within the bill.

Mr Offer: Then let me ask you this: I'm just keeping in mind the definition of wetland as proposed, but moving up to what "land" means, "surface land not enclosing a building, land covered by water and all subsoil," does that include land used for agricultural purposes?

Mr Jim Jackson: Yes. That's why land used for agricultural purposes is specially dealt with in some parts of the bill, to exclude it from the public resource definition.

Mr Offer: So a definition of wetland, which excludes from its definition land used for agricultural purpose while retaining the definition of land which includes land for agricultural purposes, would be or not be confusing?

Mr Jim Jackson: It would be confusing. You wouldn't know whether land used for agricultural purposes that was wetland was ever affected by the bill.

Mr Tilson: It's obviously the exemption of the agricultural land that the agricultural people were concerned with, and just so that their position is clear, I'm going to read a portion of what they said back into the record.

"The draft bill included in the Environmental Bill of Rights task force report contained the definition of wetlands that we objected to as being incomplete. Our objection was based on the fact that the definition, while largely consistent with that contained in the wetlands policy statement, omitted two sentences dealing with the exemption of agricultural land," and then they indicated what those two sentences were.

"Our comments of October 5, 1992, call for the wetlands definition used in the Environmental Bill of Rights to be entirely consistent with that used in the wetlands policy statement. We were shocked upon receiving Bill 26 to find that the wetlands were not defined at all, but rather dealt with parenthetically as a subset of the land definition.

"Wetlands serve as an interface between land and water resources, but as such, should be defined separately. There's no more reason to define wetland as a subset of land than there is to define it as a subset of water. Indeed, given the strong public support for the preservation of wetlands, it is essential"—I think the statement that I'm now reading is important to emphasize—"that legislation such as Bill 26 clearly indicate what does and does not constitute wetland."

There's no question, there's been considerable debate by environmentalists, by members of the public, on the whole topic of wetlands and their fear of its disappearing. We're talking about the rights of the public, yet notwithstanding what has been said by legal counsel, there is no definition of wetlands. It is for that reason that the Ontario Farm Environmental Coalition recommends that a definition be put into this bill as provided in the wetlands policy statement, and I think it's a reasonable request.

1640

What with the controversy that's been going on over the years, Mr Grandmaître, I'm sure, could tell us stories in his experience in cabinet on that topic. It has been a controversial issue over the years, and there's no reason we can't properly define what "wetlands" means. For legal counsel to come in here and say, "We could have all kinds of people come and give us definitions, explain what definitions mean"—well, let's put a definition that everybody understands, and what everybody appears to understand to date is the wetlands policy statement.

That's the rationale, Mr Chair. We were only given during the hearings literally two or three minutes to ask questions of each of the delegations. I don't know whether Mr Lessard or Mr Shaw would like to comment. I'm sure Mr Shaw in particular has read that presentation, if he or Mr Lessard would wish to comment.

Mr Lessard: I'll just go at this one more time. The definition of "land" that's in the Environmental Bill of Rights includes wetlands. That's right in the definition. The definition of "wetlands" is in the wetlands policy statement. I think it's important only to have one definition of wetland. I've already indicated the problems if we have a definition of wetland in the Environmental Bill of Rights and no definition in the Environmental Protection Act, what problems we might encounter as a result.

Mr Shaw might be able to provide some further input about what happened at the task force when this matter was dealt with there, if he can.

Mr Shaw: The concern that arose that resulted in the removal of the definition of "wetland" from the draft bill was the one Mr Lessard has just alluded to, and that is the fact that the bill may have had the opposite effect of what was intended; that is, it may have rendered the protection provided by other pieces of legislation obsolete because they themselves did not contain separate definitions of "wetland."

Mr Tilson: My only response to either Mr Shaw or Mr Lessard is that when you have a bill and you're talking about something we know environmentalists are going to be concerned about—we know they're going to be concerned with wetlands; we know that's an issue—why don't we tell them what it means? You can say, "Look to the wetlands policy statement." Well, maybe somebody will, maybe somebody won't. If that's the case, put in a definition so the bill's clear about what it means and then we can properly deal with it. Right now, it's put in parentheses under the definition of "land." Quite frankly, and I'm starting to repeat myself, I understand the concern of the farm coalition group.

Mr David Johnson: A question to Mr Shaw, if I could. I'm looking at the deputation from Ducks Unlimited. They talk about the wetlands as well, perhaps from a different point of view. Quoting from their presentation, it says:

"While in principle we support the ideals of Bill 26, we're generally fearful that such legislation will bring this valuable habitat management work to a halt. Some so-called environmentalists hold a preservationist philosophy. Their ideal is to protect areas from any form of human intervention, whether it be positively or negatively motivated. There is the perception that ambient conditions should be maintained at all costs even if such habitats are no longer wilderness areas functioning under so-called natural forces."

Essentially, their message—and they mention on the previous page loosestrife and eroding soils and carp—is that they may be prevented from doing the work they have been doing on the existing wetlands that are remaining. It seems to me that they're probably not in conflict with the farming association, but they're concerned that environmentalists might use this bill to stop them from doing their management of the wetlands that are in place today. I wonder what your response is. Is that a valid concern? It seems to me it might be.

Mr Shaw: I had the opportunity to meet with representatives of Ducks Unlimited and explore their concern. I do not believe their concern is a valid one. For the projects that Ducks Unlimited carries forth, the approvals they may require from the provincial government are not approvals given under the Environmental Bill of Rights. There are no approvals under the Environmental Bill of Rights. They require approvals such as an approval under the Lakes and Rivers Improvement Act of the Ministry of Natural Resources. They might require an approval under the Ontario Water Resources Act of the Ministry of Environment and Energy for some of their works.

Their concern, I believe, stems from the fact that two members of the public may seek to have a review done of one of the approvals that is issued to them, and they may seek to have that review done on the basis that the purpose of this act says, "to protect, conserve and, where reasonable, restore the integrity of the environment." They're questioning: At what point do you measure? How far do you restore it? The review provisions require that it be established that there may be harm to the environment to determine whether or not a review will be undertaken. I find those two different—

Mr David Johnson: I gathered from your comments that there are entry points at which two people could at least ask for a review.

Mr Shaw: They could ask for a review, but as has been discussed before, asking for a review does not affect the approval that has been granted.

Mr David Johnson: What you're telling me is that the ministry is under the assumption that if an approval is granted, even though a review has been requested, the body, in this case Ducks Unlimited, would proceed, even with that cloud of a requested review hanging over top of them?

Mr Shaw: Again, as in the discussion on the previous point on instruments, the bill sets out that the minister would find it's not in the public interest to undertake a review of a decision which had been rendered within the five years previous, unless new evidence is brought forward. Even if it is past the five-year point, the bill sets out the factors for the minister to consider in determining whether a review should be undertaken.

Mr David Johnson: From the perspective, let's say, of Ducks Unlimited, who are collecting money from the general public and who have to be shown to be stewarding that money very carefully and not squandering that money, obviously, or else they will get no more donations, Ducks Unlimited's concern may be that if there is a review that's been requested, they may be in some jeopardy to proceed with work and spend money until this whole matter is clarified; otherwise, they may find they're spending moneys that have been donated to them and they may have to backtrack to some degree. Isn't that a possible scenario?

Mr Shaw: It's a possible scenario, but can I walk through from the beginning of getting an approval. Let's just say Ducks Unlimited needed a permit to take water; that they were going to be ponding up some water behind a dam, so they needed a permit to take water. Their application, first of all, if this bill were in place, would have to be put on the registry for the public. The public would have 30 days to provide comment to the ministry on that proposal by Ducks Unlimited. The public comments would have to be taken into account prior to a decision being made on the Ducks Unlimited application, and then the minister would have to give the public notice of the decision on the application, along with a brief summation of what effect the public comments had on the ministry's decision.

Now, having issued the instrument, the permit to take water in this case, the hypothetical situation here is that two residents turn around and apply to the Environmental

Commissioner to have that permit to take water reviewed, because their contention is that something should be done to that approval in order that the environment may be protected.

I think the bill fairly clearly sets out the types of factors the minister is to take into account in determining whether a review should be undertaken. Having gone through the previous process, I believe a minister would very quickly find that a review was not warranted.

1650

Mr David Johnson: That would be in the eye of the beholder, I suppose. It would be a little difficult for us to speculate on what the minister may or may not consider to be relevant information or new factors or whatever. At least that door would be open and there'd be that uncertainty.

Mr Shaw: That door would be open. Hypothetically, the door is open today, the difference being that there is no requirement today for the minister to respond to such a request and, in particular, respond with reason for a decision to such a request.

The Chair: Further questions or comments regarding Mr Tilson's amendment?

Shall Mr Tilson's amendment to subsection 1(1), the definition of "wetland", carry? All in favour? Opposed? The motion's lost.

Further questions or comments to subsection 1(1)?

Shall subsection 1(1) carry? Carried.

Subsections 1(2), (3), (4), (5), (6), (7): Are there questions, comments or amendments to those subsections?

Shall subsections 1(2), (3), (4), (5), (6) and (7) carry? Carried.

Shall section 1 carry? Carried.

Section 2.

Mr Wiseman: Carried.

The Chair: Nice try.

Questions, comments or amendments to subsections 2(1), (2) and (3)? I see Mr Tilson has an amendment to clause 2(1)(d).

Mr Tilson: I do, Mr Chair. I move that subsection 2(1) of the bill be amended by adding the following clause:

"(d) To ensure that activities impacting on public land, as defined in section 82, and on public resources, as defined in section 82, are in compliance with environmental laws."

This amendment as well, as you can imagine, was encouraged by the Ontario Farm Environmental Coalition. If you still have your paper open, it's at pages 3 and 4 of that paper, which I will be referring to.

The agricultural community is concerned that farmers have "assurance that citizens philosophically opposed to the application of crop protection products, for example," and I'm reading from the paper that was presented, "could not use Bill 26 to champion their cause before the courts, at the expense of a farmer engaged in legal activity. As well as providing assurance to farmers, clarification of the purpose of Bill 26 would also provide

direction to overzealous protectors of the environment.”

I know the Minister of the Environment has said: “Everything’s okay. The farmers will be looked after. It’s clear.” Obviously, the farmers are not clear on this issue, and this is of course the “public land” definition they are concerned about.

Interjection.

Mr Tilson: Mr Chairman, to continue with the rationale for this proposed amendment, Bill 26 applies to public lands and public resources as opposed to private lands and resources. That appears to be clear. Therefore, in an effort to provide some assurance to the agricultural community, it is felt it would be appropriate to explicitly state at the beginning of the legislation, namely, in the purpose section—in the margin it’s called “purposes of the act”—what the overall intent is with respect to public and private lands.

The coalition, you may recall, argued that the inclusion of this clause would explicitly state that farmers would be protected against complaints on crop protection products and other legal activities in which the agricultural and other industries engage on a regular basis. That has clearly been expressed to be the intent of the ministry, although I certainly recall some vagueness in the brief. That was the problem during these hearings, of course, that we didn’t really have an adequate opportunity to ask questions and have time spent with these delegations, the few that did appear before us, to hear their elaboration on their concerns.

In my view, and that is why the Conservative Party has put this forward, the question is up in the air as a result of the oral presentation that was made by this delegation. That is the rationale of this amendment, Mr Chairman.

Mr Offer: Mr Chair, could we hear from the parliamentary assistant?

Mr Lessard: The purposes of the bill are set out in subsection 2(1). They’re fairly general in nature and they’re set out fairly generally purposely. The amendment that is being proposed really duplicates many of the principles that are covered in those first three clauses (a), (b) and (c), but actually narrows those purposes.

The biggest concern I would have is that it refers to compliance with environmental laws, and you’d really have to try and determine what is meant by “environmental laws.” For example, would it mean the Occupational Health and Safety Act, Health Protection and Promotion Act, the Mining Act? Who knows? There could be a long list of acts that might be considered environmental laws, and we really don’t know how they might be defined.

Mr Tilson: In response to that, the agricultural community is quite concerned, and they want to be clear about whether private lands are included. You have indicated some concerns with respect to the public. If current laws are being breached, would that satisfaction not be obtained in other pieces of legislation? Either it does include both or it doesn’t.

These papers are more concise than I am, and rather than I go on about it, I’ll read from it. They say, “We are pleased to see that the ‘public land’ definition provided

in the Environmental Bill of Rights task force report has been modified for Bill 26 to indicate that land leased for agricultural purposes from either the crown, a municipality or a conservation authority is not deemed to be public land.” The bill does say that. “However, we would prefer that both the ‘public land’ and ‘public resource’ definitions be moved to section 1”—and of course we’ve put it into the purposes section—“of the document from section 82. It is our belief that reference to both public lands and public resources in section 2 would add clarity to the purposes of the bill.”

1700

Then they go on to personalize their concerns that the agricultural community, being “owners of 14 million acres of land in Ontario, have concern with the very broad nature of the purpose statements in part I of Bill 26. When Bill 26 is considered in its entirety, it is clear that it will apply to public lands and public resources as opposed to private, and that it will only be used to deter illegal activity. Therefore, would it not be useful to state this early in the document with a purpose statement that ‘The purpose of this act is to ensure that activities impacting on public land and public resources are in compliance with existing environmental laws.’” Then they go on to the first statement I read.

They are correct. When you read that, they are concerned, and they are looking for clarity. There is no doubt what the intent of this bill is, and they feel it should be put at the very outset of the bill.

The Acting Chair (Mr Bernard Grandmaître): Comments, parliamentary assistant?

Mr Lessard: I can just add to the explanation I’ve given. That is, private land is covered by the Environmental Bill of Rights; however, it’s excluded with respect to the right-to-sue provisions. The reason private land is covered is that if, for example, somebody decides to open up an illegal landfill site on the farm next door, you have the right to ask for an investigation, or if he’s conducting farm practices that involve overspraying of toxic pesticides, for example, you would have the ability to ask for an investigation as well. I think that’s reasonable.

Mr Tilson: Can you do that now?

Mr Lessard: Yes.

Mr Tilson: So why are we doing it again? Why are we putting it in another place and causing problems, in this legislation?

Mr Lessard: It formalizes the process within the Environmental Bill of Rights, not only with respect to the example I’ve given but other examples as well.

Mr Offer: The amendment is specifically referable to section 82. I know we’re talking about the issue of clause 2(1)(d), but in fact we are talking in essence about the wording around section 82. It was clear when we heard the presentation that there was a very strong concern. The first question was, did the EBR, in terms of the sections up to 82, apply to agricultural land, private as well as public land? I think the ministry has indicated clearly that it does.

Dealing with the issue of section 82 and onward in the right to sue, the question was, does that right apply to

private as well as public land? The ministry I think attempted to indicate that section 82, the right to sue, did not apply to the private land or the agricultural land issue. But the problem is that the wording—and I think this amendment is important in so far as it focuses on section 82—surely could be clearer to give to those who came before the committee an absolute assurance that that which the ministry has stated is in fact going to be found in the legislation and outside the purview of some future discretion.

I think it's important that we realize it states that "public land" means land that belongs to (a) the crown, (b) a municipality, or (c) a conservation authority, and then it goes on to say, "but does not include land that is leased from a person referred to in clauses (a) to (c) and that is used for agricultural purposes."

I think that there could be a clarity, and maybe it's more of a technical type of change, where it is clear that the right to sue, part VI, does not apply to land used for agricultural purposes. That's what the ministry has stated. In fact, that's the concern that was brought forward to the committee. I know I speak to section 82 when we're talking about section 2, but we're really talking about 82. Surely there can be a change in the wording that specifically states part VI, the right to sue, does not apply to land that is used for agricultural purposes.

I think that would clearly deal with the concern that was raised. I'm wondering if the ministry officials and the parliamentary assistant would look to rejigging this opening statement under section 82, to give to the agricultural community the assurance that it wants. It says, "but does not include land that is leased from a person...and that is used for agricultural purposes."

Somebody might actually try to argue that they're talking about leased agricultural land and not land owned and used outright. I mean, those are the types of problems that you can fall into. Why can't we just give to the deputants the change that they want, which is in keeping with the position of the ministry?

Mr Lessard: Part of the reason we're conducting clause-by-clause is to entertain amendments to the bill that might satisfy the concerns that deputants made known to us. I don't know if we have an amendment before us that deals with section 82 to make it clearer, but if you're proposing one, I suppose that the ministry staff could have a look at it.

Mr Offer: We're certainly a tad away from section 82.

Mr Tilson: That's what the amendment says. It goes to 82.

Mr Offer: But I certainly would be prepared to present an amendment when we reach 82. I would like to know, though, from the ministry whether in principle—so I'm not asking for anything definite—the ministry is in favour of a position which under part VI, right to sue, excludes land for agricultural purposes.

Mr Shaw: Section 84 clearly states when you may bring a suit, and it speaks to "harm to a public resource." "Public resource" has been defined in the bill as including "unimproved public land." "Public land" has then

been defined in the bill to mean these things. The reason the "but" shows up after (c) is that there are public lands which have been leased for agricultural purposes, and we wanted those public lands excluded from the definition of "public resource." That's the reason for that "but" statement after (c). No private lands are included in the definition of "public resource."

Mr Offer: So in fact the "but" under clause (c) is talking about public lands leased for agricultural purposes.

Mr Shaw: That's correct.

Mr Offer: That underscores the need for the amendment, because no one read it that way. That just underlines the need for an amendment. We had a group come in that said: "Listen, we're taking a look at this bill. We're concerned about part VI, the right to sue. We're concerned about agricultural lands. We want to make certain that we don't fall under part VI." They saw that phrase "used for agricultural purposes" and it followed that they said, "Well, it looks a little fuzzy to us."

1710

I appreciate, Mr Shaw, how you've taken us through that, but it seems to me that we have areas in this bill where it says and doesn't include this, this or this. I do not know why we cannot put in something that's a little bit more definite for the agricultural community because it's in keeping with the principle you want to maintain in the legislation and, as well, meeting their concern. It's not done for any other reason than to allow some very important people in our province to see what part of the bill doesn't apply to them, clearly.

I don't think we'll probably hit 82 by—

Mr Lessard: Not by 6 o'clock, I don't think.

Mr Offer: I think maybe we should be looking at some more specific amendments.

The Chair: Thank you. Mr Johnson and Mr Tilson.

Mr David Johnson: A question to Mr Shaw: It's your contention that 82 does not pertain to any private land whatsoever. Is that correct?

Mr Shaw: That's correct. Section 84 is in fact the section you want, which is the section which allows you to bring suit, and that section does not apply to private land.

Mr David Johnson: Because it uses the words "public resource" and if you go back to public resource, there's no mention made of private land.

Mr Shaw: That's correct.

Mr David Johnson: Then one way perhaps to address this would be to specify under "public resource" a kind of a negative. I don't know if that's possible, that this does not include private land sort of thing. Do you have a problem with that? Given that it's omitted—you know, I can see where you're coming from. But just to clarify the whole thing, if it was specifically stated under "public resource," maybe (f) or something, "does not include private land."

Mr Lessard: Private land isn't referred to in the definition section. If we wanted to have an exclusion that applied to private land, we'd have to define private land

as well, and I think that's part of the difficulty that was considered in drafting these sections.

Mr David Johnson: You did consider that then, did you?

Mr Lessard: It was considered.

Mr David Johnson: Did you consider a definition of private land?

Mr Shaw: The difficulty would be that to define private land, it would have to be an all-inclusive definition and, if we fail to include everything, so by omission we forgot something, then it would be caught by these right-to-sue provisions, and that's the risk we're running. Whereas the way it is structured, by talking only to public land, public resource, it excludes everything else, which, of course, excludes private land.

Mr David Johnson: Going back to 84 that you mentioned, subsection (4), for example, mentions the Farm Practices Protection Board and the Farm Practices Protection Act and subsection (5) mentions agricultural operation, it mentions odour, noise and dust. These are the things that I think the agricultural representatives are concerned about. What is this referring to?

Mr Shaw: This is referring to the fact that you could have a hypothetical situation where you have active agriculture occurring adjacent to a conservation area and a conservation area is public land. What this provides for is that if somebody wishes to bring suit against that person operating the farm, the farmer—

Mr David Johnson: Can I just ask one question? That farm they're operating: Is it on private property or is it on the conservation property? Could it be on private property, let's say?

Mr Shaw: Oh, yes. I'm assuming it's private property. It's a privately owned farm.

Mr David Johnson: All right.

Mr Shaw: Before suit can be brought against the farmer, the matter has to be disposed of. In other words, the complaint leading to the suit has to be disposed of by the farm practices review board. So it's not an automatic jump that you just simply bring suit against the farmer for what is alleged to be harm to the public resource.

Mr David Johnson: Is there any provision under either (4) or (5)—because it does talk about odour, noise, dust. You need to be a corporate lawyer to understand this, and I suspect that's part of the problem that the agricultural people have. Is there any provision underneath there where somebody under either of those subsections could bring a suit or a review against a private operator, a farm operator on private property?

Mr Shaw: Yes. These provisions allow for the public to bring suit against a farmer if the farmer's activities are resulting in harm to a public resource, the public resource not being the land that is being farmed but, say, an adjacent piece of property owned by a conservation authority.

Mr David Johnson: So if you happen to be out in an area where there's no public land nearby, just farmer next to farmer next to farmer kind of thing, or farmer next to—

Mr Tilson: A road.

Mr David Johnson: —a road or maybe a village or something like that, then I presume in that situation, somebody living in the village couldn't take action against the farmer.

Mr Lessard: Public resource is defined more widely than just land, though.

Mr David Johnson: But if you happen to be next to a conservation property, then the conservation authority could bring action against the farmer.

Mr Shaw: Or if you happen to be next to any stream or river or lake, which are all defined as public resource.

Mr David Johnson: So if people going to a conservation property don't like the smell of the farm next door, then they could bring action against the farmer?

Mr Tilson: I think so.

Mr Lessard: No.

Mr Shaw: No. They have to first of all deal with the farm practices review board. Only after the farm practices review board has disposed of the matter could they then proceed to bring the suit, and the onus is on the people bringing the suit to demonstrate to the court that in fact the farming practices are resulting in harm to the environment.

Mr David Johnson: All right, but that door is open that if there's a conservation authority next to a private farm and somebody doesn't like the smell, doesn't like the noise of the tractor, doesn't like the dust that's being kicked up when the farmer is plowing his field, then there's a process open, the Farm Practices Protection Board or the act, whatever, first, but secondly, the Environmental Bill of Rights would be there that they could take action for noise, dust, odour against that farmer on his own private property.

Mr Shaw: On the basis that his activities on his private property were resulting in harm to a public resource.

Mr Wiseman: Not those three. This is not in 84.

Mr David Johnson: No. I think that's what they're concerned about.

Mr Tilson: That's exactly the concern that was raised in the very brief time we had to discuss it. The doubt was left with the delegation and it's for that reason the amendment has been put forward. There's no question that in those situations it does apply to private land.

Having said that, can you tell me, to either Mr Shaw or Mr Lessard, does the farm practices review board not give adequate protections, because really, someone who proceeds to the farm practices review board, if they fail that, it's like all these other discussions we've had with legal counsel and Mr Wiseman's example and Mr Offer, I suppose. If you don't like A, if you're unsuccessful with A, then you go to B.

That's exactly what this is all about and that's the concern of the farmer, why the farmer would like this amendment, because if someone is not successful with the farm practices review board in having their concerns addressed, they can go to the Environmental Bill of Rights; hence the public lands abutting the private land

getting into the bill in that way. So in effect, as Mr Lessard said, if I recall—I hope I'm not misquoting him from the outset—in some situations private lands will be addressed under this bill and are affected by this bill.

Mr Lessard: If, as a result, what's happening on the private lands is causing environmental harm to a public resource.

Mr Tilson: I understand. You've made that quite clear. That is a concern of the farmer and that is the purpose of the proposed amendment.

1720

Mr Wiseman: If there are no other comments on this, would we be voting on this section at this point?

The Chair: There isn't anyone else on the list, but I'm about to ask if there are questions, comments or amendments.

Mr Wiseman: Could you do that?

The Chair: Are there further questions, comments or amendments to Mr Tilson's motion to clause 2(1)(d)? Mr Johnson.

Mr David Johnson: With the risk of having Mr Wiseman angry at me, it seems to me that I can't quite understand why this applies if you're next to, let's say, a conservation authority or public property, but apparently doesn't apply otherwise. Is it just because we're concerned about our government property or something? That's the impression I get.

Mr Lessard: No. We're concerned about public resources and public resources are defined as including more than just public land or the conservation authority that you referred to. It includes water and air as well. So if you live way downstream from a conservation authority that was next to a farm, for example, it would still be covered.

Mr David Johnson: What it raises in my mind is the prospect of being unlucky in the draw. If you happen to have a farm in the vicinity of a public resource, then you're subject to complaints under the Environmental Bill of Rights, but if you're lucky—

Mr Lessard: Water and air are in lots of places.

Mr David Johnson: So it's anywhere where you're in contact with water or air, is it? If that's true, then what private property does it exclude, if I might ask? I'd like to know someplace that isn't in contact with air or water. That flies in the face of—you were saying that private property is not included.

Mr Tilson: Here's the counsel. He's going to straighten us all out.

Mr Lessard: Maybe we can hear from Mr Jackson on this one.

Mr Jim Jackson: What those provisions do, what the definition of "public resource" does, is it prevents the farmer from being sued for an alleged violation of a statute which is only damaging his own land. It doesn't prevent the farmer from being sued for an alleged violation of a statute that damages a public resource.

As has been discussed at length, if the cause of the alleged violation is one of the practices under the farm practices review board, the matter has to go there first

before the lawsuit can be started. The farm practices review board will either settle the matter as it usually would or it would express an opinion as to whether the farmer was farming in accordance with good farming practices and not causing any unnecessary problems.

That kind of opinion being expressed by an expert panel would have a considerable effect on the likelihood of success in a lawsuit and would discourage the bringing of lawsuits unnecessarily against farmers arising out of alleged violations of statutes that had an off-farm effect.

Mr David Johnson: Do you agree with the interpretation then, that if there happens to be a conservation authority next to a farm, the Environmental Bill of Rights could be used by parties because of the effect of odour, noise and dust impacting on the conservation authority?

Mr Jim Jackson: Just as it could if the farm was next to any public resource, and every farm is next to a public resource. It's either next to a road or next to the air lying over it or next to a nearby water body. So the conservation authority is only one example on a long list.

Mr David Johnson: Then from what you've said, this applies to all private farms in the province of Ontario.

Mr Jim Jackson: If they're causing damage to a public resource in violation of a statute, yes, potentially it does.

Mr David Johnson: Why have we been getting the message that this doesn't apply to private farms?

Mr Jim Jackson: It doesn't apply to damage to private farms, just like it doesn't apply to damage to your own property.

Mr Tilson: Oh, that's different.

Mr Jim Jackson: There has to be damage to a public resource before you can sue.

Mr David Johnson: But I think the concern of the—what's their official title?

Interjection: The Ontario Farm Environmental Coalition.

Mr David Johnson: I think their concern is, and maybe I'm misinterpreting what their concern is, that you have urban people who move out there and then they start lodging complaints against all the farmers. They say: "I don't like the smell of the pigs. I don't like the trucks going up and down the road. I don't like the dust when you go out and plow."

Mr Derek Fletcher (Guelph): Chicken and turkey farms, they're the worst.

Mr David Johnson: "I don't like chicken and turkey farms."

From what you're saying, it's not their own farm they're concerned about, they're concerned about other people, particularly urban people, coming out into the rural areas and lodging these complaints that the urban person's property is affected because of this dust, this odour etc. Then the farmers are going to have all of these complaints; they're going to have thousands of complaints under the Environmental Bill of Rights.

Mr Jim Jackson: I think the farmer's major concern would be somebody who came out from the city and didn't like the way somebody was farming and was

claiming that he was injuring the soil characteristics on his own farm and that he should be farming it better and claiming there was damage to the farm.

Mr David Johnson: Really? To the farmer's farm?

Mr Jim Jackson: To the farmer's farm. And trying to control the way the farmer farms by applying pesticides, or his plowing practices or whatever.

Mr David Johnson: I guess that's possible.

Mr Jim Jackson: Secondly, but still importantly, the farmers are concerned that their neighbours might try to pursue them by any number of means with respect to the effects the farming operations are having on the neighbouring property.

Mr David Johnson: Yes, exactly.

Mr Jim Jackson: If it's having effects on private property, then this part of the act will not enable the person to bring a lawsuit.

Mr David Johnson: But if it has an impact on the air over it.

Mr Jim Jackson: However, if it's having an effect on a public resource, they will be able to bring a lawsuit, but only after going through the farm practices review board first. That act was passed recently by this Legislature to protect farmers from the effects of frivolous nuisance complaints that arise out of ordinary farming practices, because city people's noses aren't adjusted to farm life.

Mr David Johnson: I think the farming community's most concerned with the second concern, which you say the Farm Practices Protection Act protects them against. Having gone through that process and being ruled out of order—I'm talking here about the public resource of air, which conducts odour, "The air is fouled over my property because the farm next door smells,"—the door's open through the Environmental Bill of Rights to lodge a complaint.

Mr Jim Jackson: Yes, but if they have a report from the Farm Practices Protection Board that says it's the result of an ordinary and proper farming practice, they're not going to get much sympathy in a lawsuit and they're probably not going to want to be paying costs to the farmer.

Mr David Johnson: They may not, but the farmer's dragged through all this. That's another process that the farmer has to live through. He may well be victorious at the end of the day, but—

Mr Jim Jackson: He can be dragged into court at common law or under other statutes as well. As with many provisions of this bill, it parallels existing processes but formalizes them.

1730

The Chair: Mr Tilson.

Mr Wiseman: No, I'm next.

The Chair: Oh, are you? Mr Wiseman.

Mr Wiseman: Yes. In view of the fact that it doesn't look like we're going to complete Bill 26, I would like to return to the subcommittee report. I'd like to move that we return to the subcommittee report.

Mr Tilson: We're in the middle of—on a point of

order, Mr Chairman: How dare he interrupt my amendment?

Mr Wiseman: Hold on.

The Chair: Hold on. I was about to say the same thing, Mr Tilson.

Mr Tilson: Perhaps in a more gentle way.

The Chair: Perhaps. It seems to me that we are debating Mr Tilson's amendment. We can deal with that; then we will deal with the motion.

Mr Wiseman: But—

The Chair: When we dispose of this item we can deal with a new item.

Mr Tilson: It's a shame that we couldn't have had more time with the agricultural community, the different groups that came here, the coalition. I can just see Mr George. He'd be absolutely furious if he heard what has come forward today, because I don't think the agricultural community believed what has just been said. They were led to believe that private lands are excluded. I'm not going to read it again, but if you read the section in their paper, there's no question, that was the belief. Although there was a little bit of doubt as to what the position was, they say, "Well, let's put it into the purpose, let's make it quite clear."

Now I can see quite clearly why Mr Lessard is opposing the amendment, because it does apply to private lands. Mr Johnson has put his finger right on it. Whether you're in a conservation area or a road, or whoever you are driving down the road, it definitely applies to private lands, and the farmer should be most concerned because he or she is going to go through the expense under the farm protection or practices—whatever it's called—a considerable expense in that process. Now they're going to have to go through another process that they believed wasn't going to apply to them, and the farmer, as we know, is put to more and more difficulties in operating a farm operation.

It would seem to me, without repeating what Mr Johnson said at length, that someone who isn't used to rural smells, who simply may—to use the the group's words, the fear of the "overzealous protectors of the environment," and to simply repeat that sentence, the farmers want to have "clarification of the purpose of Bill 26" that "would also provide direction to overzealous protectors of the environment."

There's no question, as a result of Mr Johnson's questioning of legal counsel, and Mr Lessard, that this bill is exactly what the farmers think it's not. I'm sure their presentation would have been much more forceful if they'd known what they do now. I'm amazed in fact that Mr Lessard sat through that presentation and didn't clarify it, because that group sat there and were led to believe, "Oh, well, you're going to be okay, you can just go to the farm practices review board and that's where the problem will be dealt with," and everything would be dealt with, everything would be fine. But now we find out that's not the case. Mr Lessard sat in his place, allowed the rural people, the agricultural people, to make their presentation and didn't correct them. I find that just shameful.

I guess my concern is that I would hope this section could be set down. I think this government has some obligation to enter into some sort of discussions with the rural community to clarify this position. It may well be, as Mr Offer has suggested, that there may need to be further amendments to section 82; I think that's the section.

I have great concern now that we didn't make the amendment stronger. I would like some direction from Mr Lessard or Mr Shaw as to precisely what discussions—they indicated they have had discussions with I assume Mr George and some of the other agricultural people. What impression did you leave with them as to what this bill says?

Mr Lessard: Mr Shaw indicates that he hasn't spoken with Mr George, and I haven't spoken with him. There may have been other people who did and I don't know whether they're here.

Mr Tilson: I'm not talking about Mr George, I just picked his name because that's the only one I could recall. The group that appeared before us, the Ontario Farm Environmental Coalition, Mr George I believe is one of them. He represents the Ontario Federation of Agriculture.

Mr Offer: Do they think they're in the bill at all?

Mr Tilson: Mr Offer has just commented, do they think they're in the bill at all? That's what I'm trying to say. They don't think they're in the bill. All they're asking is for a simple amendment to confirm that they're not in the bill. It's quite clear from what has been said by counsel and Mr Lessard, they're as much in the bill as anybody. They're in deep trouble, and I think that someone has misled them.

There was obviously some consultation made with the farming community. I gathered that from the coalition that appeared before the staff, or some of them, perhaps not Mr Lessard or the minister but Mr Shaw or his staff. I'd like to know exactly what was said to them because they believe they're not in the bill.

Mr Lessard: I don't know if there's anybody here who is prepared to entertain that question or not.

The Chair: Good afternoon. If you'd identify yourself.

Dr Peter Victor: Yes, I'm Peter Victor. I'm the assistant deputy minister for the environmental sciences and standards division. I have a certain responsibility for the bill of rights.

I think the question that was asked related to whether we had discussions with representatives of the farming community about the application of this bill to the farming community.

In fact we had extensive discussions with them. A number of representatives of the farming organizations came into the ministry on two or three occasions. We also arranged meetings for the same group with the chair of the task force. This issue, the one that you're dwelling on at the moment, was discussed at great length with them.

They also involved themselves in discussions with the

Ministry of Agriculture and Food, and we had further discussions with OMAF about this very point. There's no doubt in my mind that the people we met with, which included Mr George and some of the others whose names I can't remember right at the moment but I could get for you, had no misunderstanding about the fact that the bill does apply to damage or harm to a public resource if that harm is caused by activities on private land, but it doesn't apply to harm to private land.

Mr Tilson: I'd like to hear what they said because I'm simply amazed as to what's coming forward now. I'm not being critical of staff. I believe they're clear on what the bill says. What does concern me is—I don't know how many there were, I recall three or four of them who sat there—no one corrected them. No one corrected even what they said in their paper. All you've got to do is read the bottom of page 3 and the top of page 4 as to what the purpose of section 26 is.

All they are asking for is simple clarification. They believe that it doesn't apply to farmers. In fact the minister has made statements in the House as I recall, "Don't worry, farmers, the farm practices review board will deal with all of it." Well, it doesn't. Once you're finished with the farm practices review board, two people who are walking through a conservation area or along a road don't like the smell of the farmer's field, and I don't mean to be flippant but—

Mr Wiseman: They can't do anything about that.

Mr Tilson: Well, they don't like some practice of the farmer. They don't like what he or she is doing.

Interjections.

Mr Tilson: What's going on over here? I can't hear with people babbling along.

1740

Dr Victor: I think it's already been said. I don't know that I can say it any more clearly than Mr Jackson has, but the way the bill is set up is that if you had such people who didn't like the smell from a farm, they could not bring a suit under section 84 of this bill without first going to the Farm Practices Protection Board. That's what they would have to do first, and that was one of the accommodations that was made in designing the bill to address their concerns.

I think they also understand that when they go before that board, that board will rule whether the farm practice which is giving rise to the odour in this case is a normal farm practice.

Mr Tilson: But were these people made aware that the farmer is no different from a Laidlaw that is making application for a facility or something and they go through a process and somebody doesn't like the results of that process so they can come back to the environmental bill?

I guess I'm getting to the overall theme of what our amendments are on the issue of duplication. Mr Offer's quite astute comment is, "If you don't like A, you can go to B." Was the farming group made aware that someone who may not like the result of the farm practices review board could then go and use this bill, the environmental bill? Were they made aware of that?

Dr Victor: Yes.

Mr Tilson: Boy, oh boy, I certainly don't recall that when they made this presentation.

Dr Victor: I think the understanding we reached was that farmers should not be given 100% protection against harming a public resource any more than industry is given that kind of protection. That's what this bill is about. It's a bill which says that if you are breaking an environmental law, which is defined in regulation, then you can be brought before the court under section 84 if you're also causing significant harm to the environment. That applies to farmers.

The big distinction here, and perhaps this is where there's some confusion, is that it doesn't apply to a farmer damaging his own land. To that extent, this part of the bill doesn't apply, to my understanding, to the agricultural community. But if farmers, through their farming activities, cause significant harm to a public resource, then given that there is this additional hurdle, an additional protection to the farmers given by that clause which says they have to go the Farm Practices Protection Board, they are still ultimately affected by this bill. Otherwise you would be giving complete and absolute protection that anybody could do anything on a farm regardless of what it does to the public resource.

Mr Tilson: You're as much as saying, sir, that the farm practices review board is useless.

Dr Victor: No, not at all.

Mr Tilson: You're saying if someone goes through a proper hearing and they don't like what's heard, they can go—this is the same type of question we had with the Laidlaw type of application. If you don't like A, you can go to B. That's exactly what all this means, and that was the fear of the farmer, except the difference between the farmer and the Laidlaw and the AMO type of person was that they didn't think this bill applied to them.

Now we find out that they have. Now we're going to go through with this committee, after sitting here, and

I'm amazed that members of the government would sit here and not draw it to the attention of the agricultural community that the bill applies to the farmers in the same way as it does to the people who are applying for permits, the Laidlaws and others.

Dr Victor: I don't think I've anything else I can add to this discussion.

The Chair: Ms Mathysen and then Mr Offer.

Mrs Irene Mathysen (Middlesex): I move that we put the question.

Mr David Johnson: Mr Chairman, is that a valid motion in the middle of questioning of the staff member? You certainly can at the municipal level, but—

The Chair: The Chair has the opportunity to rule whether this is in order and it's the Chair's decision whether there has been appropriate discussion of the matter before the committee.

Mr David Johnson: Regardless of whether people are speaking or whether they're questioning staff or at any point in time?

The Chair: It's not debatable either, Mr Johnson. I just want to check with the clerk, because I was not here during all the discussion of this.

Mr Tilson: To put you out of your misery, I'd like to caucus this.

The Chair: I haven't decided whether it's in order yet, Mr Tilson.

Interjection.

The Chair: I know you are. I believe Ms Mathysen's motion would be in order. Ms Mathysen has moved that the question now be put. Mr Tilson has requested 20 minutes; 20 minutes will take us past the adjournment time. This committee is adjourned. We will meet next Thursday, barring some other significant measures which may occur.

The committee adjourned at 1746.

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STANDING COMMITTEE ON GENERAL GOVERNMENT

***Chair / Président:** Brown, Michael A. (Algoma-Manitoulin L)

***Acting Chair / Président suppléant:** Grandmaître, Bernard (Ottawa East/-Est L)

***Vice-Chair / Vice-Président:** Daigeler, Hans (Nepean L)

Arnott, Ted (Wellington PC)

Dadamo, George (Windsor-Sandwich ND)

***Fletcher, Derek (Guelph ND)**

***Johnson, David (Don Mills PC)**

Mammoliti, George (Yorkview ND)

Morrow, Mark (Wentworth East/-Est ND)

Sorbara, Gregory S. (York Centre L)

***Wessenger, Paul (Simcoe Centre ND)**

White, Drummond (Durham Centre ND)

**In attendance / présents*

Substitutions present/ Membres remplaçants présents:

Abel, Donald (Wentworth North/-Nord ND) for Mr Mammoliti

Lessard, Wayne (Windsor-Walkerville ND) for Mr Dadamo

Offer, Steven (Mississauga North/-Nord L) for Mr Sorbara

Mathysen, Irene (Middlesex ND) for Mr Morrow

Tilson, David (Dufferin-Peel PC) for Mr Arnott

Wiseman, Jim (Durham West/-Ouest ND) for Mr White

Also taking part / Autres participants et participantes:

Ministry of Environment and Energy:

Jackson, Jim, legal counsel

Lessard, Wayne, parliamentary assistant to the minister

Shaw, Bob, coordinator, Bill 26 implementation

Victor, Dr Peter, assistant deputy minister, environmental sciences and standards division

Clerk / Greffier: Carrozza, Franco

Staff / Personnel: Leitman, Marilyn, legislative counsel



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Assemblée législative de l'Ontario

Troisième session, 35^e législature

Official Report of Debates (Hansard)

Thursday 25 November 1993

Journal des débats (Hansard)

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**Standing committee on
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**Comité permanent des
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Provincial Offences
Statute Law Amendment Act

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LEGISLATIVE ASSEMBLY OF ONTARIO

G-601

STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday 25 November 1993

The committee met at 1016 in room 151.

DISTRIBUTION OF LETTER

The Chair (Mr Michael A. Brown): The standing committee on general government will come to order. The business of the committee this morning is to deal with Bill 47, An Act to amend certain Acts in respect of the Administration of Justice. As committee members know, we're operating under an order of the House, which—

Mr David Turnbull (York Mills): On a point of privilege, Mr Chair: I have to bring a very serious matter to this committee which I believe requires urgent attention by this committee. Yesterday, I believe the integrity of the committee process was breached by the release by the deputy Chair of this committee of a letter which was addressed to the Chairman of the committee, the deputy Chairman and the minister. It was a letter written by Mr Wright, the commissioner for protection of privacy legislation. He released that letter only to his own caucus, and a question ensued. The letter arrived, I believe, with the committee at 1:13 yesterday afternoon. As a consequence, I reluctantly have to request the removal of Mr Daigeler, the Vice-Chair of this committee, for this breach.

Mr Hans Daigeler (Nepean): I understand that in fact this is a significant matter and I appreciate the concern of the Conservative Party. In reviewing the letter, I checked as to how I actually received this letter. I can appreciate the concern of the Conservative Party. If a mistake was made, I apologize for this.

However, I would like to point out that the way this letter actually arrived at my desk is rather, frankly, by quite unusual circumstance, as you can see from the way this letter is addressed. It was faxed to the Chairman. It has my name on it as well. However, the room number is 1405, which is the clerk's number. So when this was faxed to me, when this arrived at my fax machine yesterday afternoon, I assumed that this was going to everybody else; that if it was faxed to me—which is, frankly, highly unusual—as it was faxed to two ministers as well, that this was a public document.

However, since it is a questionable matter, I certainly can understand the concern of the Conservative Party and I apologize for making it available only to my party rather than ensuring that in fact it had been, through the clerk, distributed to all members of the committee.

Mr David Johnson (Don Mills): I wonder if I could ask—I don't know if it's the clerk or the gentleman on the right, legislative counsel, whoever would respond. Certainly at the municipal level when correspondence is directed to a person in authority—in this case, either the Chair or the Vice-Chair—then the correspondence would have to flow through formal means to all members of a committee or to all members of a council. I wondered if someone could explain to me the proper process.

We have a piece of correspondence that has been directed to the Chair of this committee and also to the Vice-Chair of this particular committee, and there is no carbon copy to anybody other than the minister and the minister of government services, I guess it is, Mr Charlton and Mr Pouliot. But there's no general distribution of this, so it's obviously an official letter to those in authority on this particular committee. I wonder if somebody could explain to me what are the rules and regulations of how such pieces of correspondence are to be dealt with.

Clerk of the Committee (Mr Franco Carrozza): I will certainly try to, Mr Johnson. The fax arrived in my office at 1305. As you notice, it is addressed to Mr Brown, the Chair of the committee. I have no authority to distribute this letter to the members of the committee without the authorization of the Chair, whom I called a number of times. I was not successful until a quarter to 5 last evening. I spoke to the Chair. I informed him of the letter and he gave me permission to distribute it immediately and I did that last night. Unfortunately, because of the lateness, I don't believe you have received it yet. That is why I brought it here this morning with me. But that is the process. I personally do not have the authority to distribute this letter. I did not give it to anyone and this is the only matter that arrived in my office.

Mr David Johnson: Perhaps I should clarify that I'm not questioning how the clerk has handled this, because the letter wasn't directed to the clerk in the first place. But it was directed to and was received by the Chair and the Vice-Chair, apparently, of this committee. What I'm asking is—

Clerk of the Committee: Could I correct you there, please? The letter arrived at the committee's office, which is where I reside. It did not arrive at Mr Michael Brown's office, in his own private office, but rather at the committee's office and addressed to the Chair.

Mr David Johnson: Okay, all right.

Mr Daigeler: It did arrive on my office's fax.

Mr David Johnson: So it arrived in the committee's office and it arrived on the fax of Mr Daigeler. As Vice-Chair, for example, and Mr Daigeler has spoken to this, what sort of rules and regulations govern how he deals with a piece of official correspondence of that nature? Can somebody advise me? Maybe it's to legal counsel; I don't know. It seems to me that, there must be a formal method for dealing with literature of this nature. What's happened is that before being brought to the attention of this committee, it was dealt with in the House, it was alluded to in the House. I doubt that's proper procedure. Can somebody comment on that?

Mr Russell Yurkow: From our office, that's a procedural matter that is not within our jurisdiction to comment on. We can only speak to the legal contents of

the bill itself and not procedural matters.

Mr David Johnson: Can somebody comment to me with regard to the procedures that govern us here, whether they're House procedures or committee procedures? Surely, a piece of correspondence that's directed to a Chair of a committee should come to the committee before it's dealt with in the Legislature. Are there not such regulations?

Clerk of the Committee: I'm not aware of any, sir.

Mr David Johnson: Would that at least be the policy or the process that has been used in the past? Mr Chair, I just think it's wrong when we're having something like this before us and a piece of correspondence goes to the Chair and the Vice-Chair of the committee. It's directed to this particular committee, the standing committee on general government, and I, for one, would like to know what the processes are. I suspect there must be some rule or regulation that governs how these things are dealt with and I would ask the staff to do a little bit of research on this and let me know, because I think this matter should have been brought back here rather than being dealt with in the House. I'd appreciate other comments on that. I think the process has been abused.

Mrs Irene Mathysen (Middlesex): I share this concern. This letter was addressed to the Chair and the Vice-Chair of this standing committee and it would seem to me that the Chair and the Vice-Chair have the same obligation as the Speaker in the House to act on behalf of all members.

I didn't receive this communication and I believe that using it in a partisan way compromises this committee. I'm very disturbed by it, because this committee is supposed to function in a positive way to benefit all of our constituents. If one member of the committee, particularly the Vice-Chair or the Chair, is withholding information from the committee or misusing information, that puts the whole committee process into serious question. We need to address that, because personally I feel, and I think others feel, the committee process is far too important to be playing games with it.

Mr David Tilson (Dufferin-Peel): Mr Chairman, the letter is addressed to you, as Chair, "Mr Michael A. Brown, Chair." It's also addressed to Hans Daigeler as "Vice-Chair, Standing Committee on General Government" and, as Mr Johnson has indicated, with a copy to the Minister of Transportation, Mr Pouliot, and Mr Charlton, presumably in his capacity as House leader. This is a letter, when it's read, which is obviously written by Mr Wright in his capacity as commissioner on privacy to assist this committee in its deliberations with respect to photo-radar. It wasn't designed as research for the Liberal Party. Mr Conway, in his usual excellent way, asked a good question in the House yesterday, and that was the basis of this letter.

We're not talking about the merits of the question. We're talking about information that was presented by the commissioner to assist this committee in its deliberation and not to be used in a partisan manner, at least until perhaps after the committee has dealt with the letter or dealt with the subject. I suppose it's free for any member to do whatever he or she wishes with it, but

technically, in my view, it's not even available to the public, it's not even available to other committee members.

I can share one experience where Mrs Marland, as Chair of agencies, whatever that committee's called, received some information with respect to the Workers' Compensation Board. That information she kept to herself until it was made available for the committee. She didn't even make it available to the members of the Progressive Conservative Party, although she certainly had the ability to do that. She kept it until all members of the committee saw it at the same time. I think it's rather unusual that the first time for all members to hear of this letter is when it's being read by Mr Conway or referred to by Mr Conway in support of a question during question period involving photo-radar.

The clerk of the committee has indicated that he knows of no such rules or laws that preclude Mr Daigeler from releasing this letter. However, there is tradition in this place, there is a certain decorum in this place by which, hopefully, material that's made available to—we on this committee entrust you, Mr Chair, to do certain things on our behalf. We entrust the Vice-Chair to do certain things on our behalf. I think it's most improper. I think that trust has been—I hate to use the word "violated," a strong word, but certainly the ability or the power that we gave the Vice-Chair has been abused.

Presumably during these deliberations on photo-radar this letter will be dealt with, notwithstanding the fact it's already been dealt with in the House. I am concerned with that, the conduct of a Vice-Chair using for partisan purposes a letter which should have been seen by members of this committee in our capacity as members of this committee in advance of our committee reaching this process.

I remind you, Mr Chair, that this letter is not directed to the Liberal Party of the province of Ontario. It's directed to you and to Mr Daigeler in your capacities as Chair and Vice-Chair, and my comments are not towards you because I don't think you were involved in this. But this letter is directed to the Chair and the Vice-Chair in your capacities as Chair and Vice-Chair.

I would like to hear some sort of comment from the clerk perhaps. He has indicated that there are no rules that preclude the Chair or Vice-Chair from doing this sort of thing, but surely there must be some sort of tradition. Perhaps I shouldn't be asking the clerk. Perhaps the clerk should be consulting with you or advising you. But I would like to know what the tradition in this place is. You have been in this place much longer than I and most members of this committee, but my understanding is that this sort of thing is not done in the tradition of this Legislature nor in this committee.

1030

Mr Bernard Grandmaître (Ottawa East): I think the explanation given to us by Mr Daigeler is understandable. I don't see any confidential stamp on the letter. My colleague assumed that it was available to all members of this committee, and I suppose this is why he brought it to the attention of not our House leader but our deputy leader.

I think Mr Daigeler's explanation is acceptable. I realize that the Tories are a little disturbed. I think what's really disturbing to the Conservatives is that it was raised in the House in the form of a question and they didn't have an opportunity to raise that very same question, because I'm sure they would have raised it. That's what's so ticklish to the third party. I think we should put aside our party colours and get on with the business at hand.

Mr Daigeler: As I indicated at the beginning of my remarks, I do see the seriousness of this matter. Frankly, in reviewing this matter, I wish I had consulted with the clerk to make sure that in fact this did go to all members of the committee.

As was indicated by the clerk himself, there is no practice. In fact I have, never received such a letter before, and therefore I simply assumed this was going to everybody else because it arrived on my fax.

It says, "Dear Mr Brown." It does have my name as Vice-Chair at the top here, and frankly this is highly unusual. I do acknowledge the fact that obviously the Chair and the Vice-Chair have to act in a non-partisan manner, and in reviewing this matter I concur with the views that have been expressed that as a matter of practice it would obviously be preferable to immediately make this available to all members of the committee. In that regard, I am apologizing and have apologized. It is up to the committee, of course, to deal with this matter as it wishes.

The Chair: Further discussion?

Mr Turnbull: Before I go further with my comments, I believe it would be appropriate perhaps if the Chair would respond to the questions that my colleague Mr Tilson put to you during his discourse.

The Chair: Mr Turnbull, I will be pleased to respond when in fact the Chair makes the ruling.

Mr Tilson: A point of order, Mr Chair.

The Chair: A point of order on a point of privilege?

Mr Tilson: Which one will I take? Just to clarify, I did ask you a question, and it went unanswered.

The Chair: I will try to do it today.

Mr Tilson: With respect, I would rather that the comment be made in advance of you making any ruling. In other words, for information purposes of this committee—and I know the clerk has now had an opportunity to tell you his thoughts on the tradition of the province of Ontario, the Legislature and this committee on this topic—I think, with respect, that should be given before you make any ruling on this point of order.

Clerk of the Committee: Regarding your question, Mr Tilson, as to our rules regarding the clerk's functions, with any material arriving on the clerk's desk that is to be dealt with by the committee, he is to contact the Chair and request instruction on how to proceed.

In this case, as soon as I received the letter, I contacted the Chair. He was in his riding. I had difficulty contacting him. I had to call him at home, and the only time I could speak to him regarding this letter was at quarter to 5. As soon as I informed him of the letter, he gave me authorization to deliver the letter to all the members of

the committee. No one received a copy from my office. My understanding is that the Vice-Chair received a fax separate of the clerk.

The Chair: If I could be helpful here, Mr Tilson, you were requesting me to respond. It has been my practice and I believe the practice of chairs in this place for as long as I've been here, anyway, and I presume much longer than that, that the Chair act as a neutral party as he sits here, much the way the Speaker does in the Legislature.

When correspondence has come to my attention where it's been addressed to the committee or myself as Chair of the committee, I have made a practice of instructing the clerk, and the clerk can confirm this, and of authorizing the release to all members of the committee simultaneously of information that might be useful. I have not necessarily held it to the next committee meeting, because by doing that you preclude members from giving some thought to correspondence that would be before the committee. But my practice has been to authorize the release to all members of the committee simultaneously of any correspondence that the committee has received. If that's helpful, Mr Tilson, that's the practice I have followed.

I should point out that in this case the clerk was looking for instructions from the Chair, not from the Vice-Chair.

Further on the discussion? Mr Offer and then—

Mr Turnbull: Excuse me, I had another point.

The Chair: I'm sorry. I forgot that we were having a point of order on a point of privilege.

Mr Turnbull: No, no. I was joining the debate on this matter.

The Chair: But Mr Tilson was on a point of order. I just lost track.

Mr Turnbull: Yes. Essentially, much of what I wanted to say has already been said, but I have to take exception to what Mr Grandmaitre said, that this was being made into a partisan issue. The facts are that the NDP as well as the Conservatives were denied access to this information.

Mr Daigeler is an experienced member of this Legislature. In fact, of all the members in this committee, the Liberals are the most extensively versed in the ways of the Legislature. The fact that a communication which essentially is privileged by common acceptance to a committee Chair or Vice-Chair until such time as it is either released to the whole committee or, alternatively, until there has been some discussion in the committee has been released by the Vice-Chair unfortunately brings me to the conclusion that the Vice-Chair has no choice but to resign. He has violated that trust.

I believe that perhaps Mr Daigeler, upon reconsideration of his position, may wish to tender his resignation. Failing that, I would propose that the motion go forward to a vote on the matter. I know Mr Daigeler to be an intelligent person who has experience of the legislative process and he is well aware of the fact that committees are supposed to be non-partisan. We all know that isn't the case. Nevertheless, when you start having the Chair

or the Vice-Chair releasing information, that goes beyond the bounds of what has been the common practice in this assembly.

Mr Tilson has already made reference to the fact that Mrs Marland, several weeks ago, received correspondence from the Provincial Auditor with respect to the WCB and withheld that from the Conservative members until such time as she had been instructed by the committee as to what should be done, and then it was released simultaneously to all members of the committee. That is appropriate and that is evenhanded and that is part of the process that we must as legislators protect. Otherwise you might as well wind down the committees completely.

1040

Mr Daigeler: Mr Chairman, could we have a recess for 20 minutes?

The Chair: We would need a motion to do that. We have Mr Offer and Mr Fletcher wishing to speak.

Mr Steven Offer (Mississauga North): Obviously, much has been said about this. What I am hearing from the Chair and the clerk is that there are certain rules and regulations that the clerk must follow, and from the Chair I am hearing that as far as the Chair and the Vice-Chair are concerned, there is a practice, obviously, that is followed but nothing that is set down. The thing that went through my mind was that I didn't actually know that. This might be a matter that in principle should be sent to the Legislative Assembly committee with respect to reviewing the roles, responsibilities and procedure for Chairs and Vice-Chairs.

I say that because I think there is some room for that type of discussion, especially since individuals are now sending things by letter and by fax. I think we're all the recipient of letters and faxes all the time. We respond to them in the usual and normal course, and I think maybe we have to deal with that particular issue.

That's all I actually wanted to say on this motion because of the fact that I think there is some room, that matters of this kind in dealing with the roles, responsibilities and procedures of Chairs and Vice-Chairs maybe should be reviewed by the Legislative Assembly committee, which I think is the one that's most responsible for reviewing new things that come up.

Mr Daigeler: On a point of privilege, Mr Chair.

The Chair: Another point of privilege: Mr Daigeler.

Mr Daigeler: I wonder whether it's agreeable to the committee to provide me with an opportunity to reflect on this matter until this afternoon and we deal with the motion, if there is one on the floor, this afternoon.

The Chair: There actually is no motion on the floor. What I do have is a point of privilege by Mr Turnbull. Mr Fletcher has indicated that he wishes to speak next, but certainly the Chair is at the behest of the committee. If I have unanimous consent, we can defer further discussion of this matter until this afternoon, if someone would like to ask for that.

Mr Turnbull: Preparatory to that, I would like to make a motion that Mr Daigeler be removed from his post as Vice-Chair in view of this breach of confidentiality of material.

The Chair: I have to deal with the privilege part first, and I'm still hearing arguments regarding the privilege. Mr Fletcher; then we could entertain motions, if that's—

Mr Derek Fletcher (Guelph): I'll wait for the motion. I'll speak to the motion if there is going to be a motion.

The Chair: This is an important and significant matter, and I think it behooves the Chair to listen to all arguments put forward by various members of the committee before I rule. Mr Fletcher.

Mr Fletcher: Thank you, Mr Chairperson. I don't believe Mr Daigeler meant any disrespect or any misuse of information. As far as I can see, I've been on committees with Mr Daigeler before and I don't think he's that kind of person.

But following on what Mr Offer was saying about perhaps how there should be some rules and regulations, I know that in certain circumstances when there is a breach, or a perceived breach, persons will step down from their position until all evidence has been heard and until they're either reconfirmed to sit back in that position or told not to sit back in that position.

Following what Mr Offer was saying, I think that is a good idea, but I do believe that at the present time with what has happened, since everyone did not have the information at the same time, since it was addressed to just two people and not members of the committee as is usually the practice when there is correspondence, it's to the Chairperson and members of the committee, I think it would be appropriate that Mr Daigeler remove himself as Vice-Chair until there are some regulations or some rules or what have you, some investigation and some determination as to exactly what information a Chairperson and a Vice-Chairperson can use and how they can use it and how it should be distributed.

I agree that there is a lot of information that does come our way through faxes, through letters. Many times I receive things in my office for committee purposes that are not addressed to me. They're addressed to the Chairperson of the committee and they usually say, "For the purposes of such-and-such a committee" on it.

I can see where there could be some misunderstanding as to whether or not this information had been sent to every committee member. I'm not sure whether Mr Daigeler should have gone around and made sure that every member had this information before he used it. I think we should have some determination from a body other than this committee.

The Chair: I have Mr Morrow, Mr Wessinger, Mr Johnson and Mr Tilson, I believe? Yes.

Mr Mark Morrow (Wentworth East): My understanding this morning is that Mr Daigeler apologized properly. He made a mistake, he recognized the mistake and the committee understands that he made a mistake. I really don't understand why we're going through all this.

We do have business to attend to and Mr Daigeler is obviously sorry for what he's done. I know I've had dealings with Mr Daigeler before and he's very honourable in what he does. I really don't see the need, after this debate is over, to put a motion forward to have him

removed as Vice-Chair. He's done the honourable thing and apologized. I think that's all we need to hear.

Mr Paul Wessenger (Simcoe Centre): I'm just going to reiterate the same position. I think it's clear a mistake was made here. Mr Daigeler, being an honourable gentleman, has recognized he made a mistake. I don't think the mistake is of such a serious nature to warrant his resignation or removal from the chair. I think an apology is sufficient in these circumstances. We have to recognize all of us make mistakes from time to time because of perceptions we have. If that perception is of a minor nature, which I consider it in this circumstance, we ought to accept an apology as being sufficient. I think we've all learned a lesson from this and perhaps it should be made clear to all chairs and vice-chairs what their obligations are. That would be the best way to deal with it, to make that clear to all chairs and vice-chairs so that we don't have other people, again because of mistaken perceptions, making a mistake.

Mr David Johnson: Mr Daigeler's name has come up, but this really isn't a personal issue; it's a process that needs to be clarified. The kind of proposal that Mr Offer has put forward and Mr Fletcher has added some words to outline I think perhaps a proper way to consider an issue that everybody acknowledges is very important to this committee and to the House in general. That process is to have the matter referred to a committee and have full discussion to establish the proper process for dealing with correspondence that comes in through formal means, correspondence to the Chair or Vice-Chair, and how that correspondence should be handled. Mr Fletcher has indicated that during processes of that nature, where there has been a particular instance that has raised the issue, then it would not be uncommon for the person involved to step aside while that process is going through.

1050

Perhaps it's easy to minimize the impact when you look at the circumstances of one particular case, but it's so important that we establish a proper process. It's not just the ticklish situation because the Conservatives didn't get to ask the question. It deals with how correspondence comes to the elected members of this Legislature and it deals with how committees function and how committees get to receive information and deal with information and then make the decision in the manner in which the House has anticipated that the committees would be able to deal with that information and recommend actions back to the House.

It gets to the question of, are formal positions able to be used for political purposes or, as has been suggested, are those formal positions, Chair, Vice-Chair, for example, of a committee—and the Chair's position is not in question here certainly, but—

Mr Daigeler: On a point of privilege, Mr Chairman: If I could just clarify, I certainly agree with Mr Tilson that the position of Chair or Vice-Chair should not be used for partisan purposes. I am simply making the point that I was under the understanding, because this says, "Dear Mr Brown," it was faxed to room 1405, which is the clerk's office, and it was faxed to my office as well,

that this was now a public document and not any more a document that was simply confidential up until that point.

I certainly agree with Mr Tilson that any correspondence that is officially brought to the Chair or Vice-Chair should not be used in a partisan manner.

Mr David Johnson: I really don't wish to get into an argument here about this and that. I think this is a matter that really should be discussed, because if there aren't rules and regulations—certainly, as Mr Tilson alluded to, there's a tradition and a history, and I think they can be converted into rules and regulations so that we do know how to deal with them. The letter was sent specifically to the Chair and the Vice-Chair and it's pretty clear on the bottom that the carbon copies have not gone to the members of the Legislature but have just gone to two specific people in very senior positions and not to the members of the Legislature in general.

But the main issue here that this raises and that perhaps goes beyond this particular case again involves how official correspondence directed to a person in authority, whether it's the Chair or the Vice-Chair, is formally dealt with. I think it's necessary to clarify that and nip anything in the bud. Mr Offer, I think, has indicated that faxes are very common now, that the kind of environment that we live in as elected representatives is changing quickly, and I think it's important to establish those kinds of ground rules.

If they are not, then it lays open the possibility, and I'm not saying that's what happened in this particular case, that information could be used by someone in authority as a Vice-Chairman or a Chairman for political purposes, for press releases, for press conferences, before the committee has a chance to get the material, before members of the House in general have a chance to get the material.

It was used in question period; it could be used indeed to withhold information or suppress information that could be embarrassing. I'm looking down the road and, I'm sure, beyond what was ever intended in this particular case, but these kinds of things can happen unless there are pretty clear rules and regulations.

I think all of us around here today have expressed, without exception, that that shouldn't be the case, that in a position of Chair or Vice-Chair, when information comes, it should be used for nonpartisan purposes. It should be focused back to this committee. I think what's being suggested by a few people around here is that the way to do that and set up that process is to have a committee consider it. Mr Daigeler may choose to step down while this consideration is going on. That seems to be quite a reasonable way to go.

Mr Tilson: I hope Mr Daigeler doesn't think this is a personal attack on him; it certainly isn't. I think all members of this committee respect Mr Daigeler and the work he does. We may not agree philosophically with what he does, but we respect him. That's not the issue.

In my short career in this place, and that applies to pretty well everyone in this room, I've never seen this happen. Material comes to chairs of committees, vice-Chairs of committees—the process could be exaggerated

even further. If we as a committee accept this, what's to preclude a Chair, whether it be a Conservative Chair, a New Democratic Chair, a Liberal Chair, from withholding information for a period of time for whatever purpose, for political purposes? It might be that a Chair who may be a member of the government may receive information that could be embarrassing to the government of the day and may choose simply not to inform the other members of the committee. That is a concern as well.

I do get back to the history of this place and the traditions of this place. I've never seen it happen. I've never heard of it happening, this type of thing where a person, in the capacity as Chair or Vice-Chair, receives information which, whether it embarrasses the government or whether it's critical of the government or whether it's used for political purposes, is taken for that purpose and given to their party for political purposes in the House.

A mistake was made. We've all said a mistake was made and I will accept that Mr Daigeler made a mistake. It's very tempting to see a letter like this and give it to the leader of my party or the House leader of my party. It's very tempting, if I were Chair, to do that.

I give the example of Ms Gigantes when she was Minister of Health. She made a mistake as Minister of Health. She released a name in the House that she shouldn't have released and I think, realizing this, she quite properly resigned her position in the House. We may have made political remarks, but we respected the fact that she made a mistake. We make mistakes. It's very rare, but occasionally even the Conservatives make mistakes.

I don't mean to be flippant, Mr Chair, on a matter which we do consider serious. This process has been wronged, the process of the duty by chairs and vice-chairs to the members of the committees. This process has been wronged in the same way, if I could make an analogy, that Ms Gigantes inadvertently released a name in the House. The process was wronged and she acted quite appropriately.

The Chair: Is there further discussion on Mr Turnbull's point of privilege? If not, the Chair will reserve his decision on this. This is a significant and important matter and I would like to have the opportunity to confer with people from the Clerk's office so that we might have any proper precedent, authorities and traditions, available to the Chair to make the ruling.

I will say that in my experience here, however, what we're dealing with is a very difficult and thorny question that I think we as members of the Legislature will probably have to address, and that is really the position of Vice-Chair. The Chair's position has been quite clear and well defined here. The position of Vice-Chair is a more difficult position to deal with, because often the Vice-Chair spends significant time as even the critic of a bill, as in this case, and I think that's what will have to be looked into.

For the moment, I think the most prudent course of action is for me to reserve judgement until I have time to confer with the authorities in this place.

Moving on, back to Bill 47, An Act to amend certain Acts in respect of the Administration of Justice.

1100

Mr Turnbull: Mr Chair, I believe it is appropriate for us to handle the subcommittee's report with respect to these committee hearings. It should have been handled before the committee hearings so that we can organize our affairs. I would just like to read the report of the subcommittee.

The Chair: Mr Turnbull, as you will note by the agenda, that is the first item for consideration this morning.

Mr Tilson: Mr Chair, before you do that, could I speak on a point of order? I'm not normally a member of this committee, nor is Mr Offer. I am here as a critic for the Conservative Party with respect to the Environmental Bill of Rights, which this committee was in the process of dealing with.

There was a motion by this committee that we begin the clause-by-clause deliberations with respect to Bill 26 on the 18th, this Thursday past. We did that. That debate continues. As well, there was an amendment to the bill which was on the floor and Mrs Mathysen made a motion that the question be put. I asked that this matter be caucused, and that process is still under way.

I suppose technically there are still a few minutes left in that period of time, but we are now in the middle of a vote. This committee is now in the middle of a vote and cannot, I would submit, stop a vote and jump into something else simply because there's some motion of the House that's going to refer some matter to this committee. This committee is currently, at this moment, in the middle of a vote.

Mr George Dadamo (Windsor-Sandwich): Mr Chair, I want to comment on something else.

The Chair: On Mr Tilson's point of order?

Mr Dadamo: No.

The Chair: It's a different matter? Fine. Mr Tilson would know that the committee is acting under an order of the House. We are acting properly. If I were to rule on that motion, we should have ruled on this an hour ago.

Mr Tilson: Mr Chair, that was on a point of order. I would submit that we are at this very moment in the middle of a vote, and at the very least this vote should be taken.

The Chair: We are acting under an order of the House. When the committee next deals with the Environmental Bill of Rights, then we will be taking a vote.

Mr Tilson: Mr Chair, with respect, we may well be dealing with Bill 47, as directed by the House, but before we do that, I would submit this committee is in the middle of a vote.

The Chair: I made the ruling. Thank you. Mr Dadamo.

Mr Dadamo: We're here to deal with photo-radar. We have staff from MTO and the Attorney General's office this morning. I want to stress to the committee members as well that we have a couple of days left, in a very crucial time, to complete photo-radar. I know the

critic will understand this. We have today, this afternoon and next Thursday, and that'll be it. We've had sufficient time to debate it in the House, five days, and we've debated it to death. We need to get on, sir.

Mr Tilson: Give me a break. We haven't debated it to death at all.

SUBCOMMITTEE REPORT

The Chair: The Chair is attempting to get started. We will deal with the subcommittee report on Bill 47, An Act to amend certain Acts in respect of the Administration of Justice. All members have the subcommittee report in front of them. Would a member of the subcommittee like to move its adoption? Would you like to read it into the record, Mr Turnbull?

Mr Turnbull: The motion reads:

"That because there is no consensus on how to proceed in subcommittee, we agreed that there is not adequate time as a committee to deal with Bill 47, therefore we recommended that the House reconsider its resolution of November 16, 1993."

Mr Brown, when the subcommittee met to consider the ordering of business for Bill 47, there was, as is in the motion, no consensus. There was great concern that with two days in committee there was not sufficient time to even fully consider the clause-by-clause. This is a very significant bill, which has wide-ranging implications not only to matters regarding the administration of justice but also considerations of possible charter challenges.

There has been insufficient time for the clause-by-clause, but most significantly we have the public clamouring to be heard on this issue. In this box here, I have 126 letters which I have received either by mail or by fax. Of these 126 letters, only two people are in support of photo-radar. I have received somewhere between 75 and 100 phone calls at my office on this issue. Of those phone calls, only one person was in favour.

Overwhelmingly, people are demanding public hearings, meaningful public hearings, and yet we have been given insufficient time for even clause-by-clause of this very significant bill, which will undoubtedly be subject to a charter challenge. In fact, the Attorney General has already admitted that she acknowledges there will be a charter challenge of this.

I would like to just read briefly from a letter that I received:

"During the election, you promised"—this being the present government—"repeatedly that you would consult widely with us on all legislation. That impressed us. Now we find you are ramming through Bill 47, with no public hearings or input. And what does Bill 47 contain? A major tax initiative cunningly hidden behind the cloak of public safety.

"Bushwah, sir. In your increasingly desperate search for money, your government is set to pervert traditions of British common law dating back to the Magna Carta. I shouldn't have to remind you that we are all innocent until proven guilty, and fining/taxing someone for simply owning a car that was photographed in a compromising situation is draconian."

Skipping down to another paragraph in it, it says:

"Not only that, but your own Attorney General has admitted that this bill is likely to be challenged. Why push through legislation that is vulnerable to both the charter and the Constitution? The defence of such a challenge will cost Ontario taxpayers millions, which we can ill afford, and if it is overturned, the Supreme Court would hopefully order restitution."

In the light of this overwhelming response from the public that they want meaningful public hearings, I suggest that the motion by the subcommittee that longer hearings be held—preferably it should be during the recess so that we can advertise widely and allow public input so that people are aware that these hearings are being conducted, and then have a meaningful clause-by-clause of a bill which is some 20 pages long and has implications right through the whole administration of justice in this province.

1110

Mr Fletcher: Listening to the members opposite is like listening to what they were saying in the House before when this debate was going on. The opposition has had a lot of time to debate this, and as far as I can see, they seem to be stalling on an initiative of this government.

Mr Turnbull: The public haven't had any opportunity, sir.

The Chair: Mr Fletcher has the floor.

Mr Fletcher: We've spent about five days on second reading debate and the opposition wouldn't agree to end debate. Then as a repetition of everything that is being said, they call it a tax grab, a hidden tax grab.

The fact of the matter is that with 1,100 fatalities a year on our highways and over 90,000 injuries on our highways, this becomes an issue of highway safety. Ontario is not the first jurisdiction to move into photo-radar. I think it's time that the opposition stopped its stalling tactics and got on with what we're supposed to be doing, and that is promoting safety on the highways.

If we look at what the Ministry of Transportation is doing and take it as a package, not only photo-radar but licences—we've introduced the graduated licences for young people—that's part of making the highways safer and also trying to protect lives on the highways.

An automobile and driving is not a right; it's a privilege. That privilege carries with it some responsibility, and that responsibility is to obey the laws of the highway. If people are going to consistently violate the laws on the highway and drive tons of metal hurtling down the road at speeds that can cause death and serious injury, then I think the government must react responsibly, and that's what this government is doing. I believe that the opposition, especially on the Conservative side, is listening to the voices of those who do not wish to obey the laws of our society and do not wish to obey the laws of the road.

I know some police officers who just shake their heads when they see what is going on, the carnage that is going on on the highways. It's ridiculous. I drive the 401 frequently, and with some of the antics that are going on on the highways, I just want to get off. There are a lot of

people who wish to get off the highways and use other roads because they are not safe. Not everyone is a lawbreaker, not everyone is doing it, but those who endanger themselves and other people should be brought under control. I think photo-radar is another step in that direction of controlling the safety of our highways.

I can't agree with the subcommittee report whatsoever. I think we should continue and move along with this piece of legislation and have it enacted.

Mr Dadamo: I would have thought that the critic for the Tory party was more tolerant of what we'd like to do. We've stressed over and over again that this is part of our safety initiative package. As my colleague had mentioned, it's part of the RIDE program, it's part of the graduated licensing program, and photo-radar is not the tax grab they have made it out to be in the Legislature on recent days.

In the province of Ontario, we're talking about 1,100 fatalities a year. We know that speed kills. We're merely trying to slow people down. There are some states that have, in the median, empty police cruisers. Instinctively, it slows you down for a while. Photo-radar is meant to do that. Consciously, we want people to realize that going over the speed limit perhaps a little bit, sometimes significantly, will increase the opportunity for collision.

There are about 90,000 injuries in Ontario every year. It costs society about \$9 billion, so we all pay. In a time of recession, depression—and it continues and we certainly don't have to preach that to anyone—we can ill afford, and there's no pun intended, to spend \$9 billion a year because people are having auto accidents, and a lot of that is due to speed.

I want to reiterate, for those who may have walked in late, that we've had five days' debate on this in the House. I think that's sufficient. I think that's more than enough in debate. We've been kind enough to give information to the critics. They have most of the information that we have. We're not hiding anything. I'm sure that many of their members, if they have conversations one on one, will say clearly that what the government is trying to do is not hidden; it's not a hidden agenda.

Photo-radar works in Australia. It works in New Zealand. There are states that have it. Alberta has it. British Columbia has it. Read the reports. The numbers drop significantly at the end of the year. People do at some point realize, "If I'm going to take this particular highway over and over again, whether I'm going to work, whether I'm driving to the cottage or whether I'm going visiting, and if I know the machine is going to be there, then I think I should slow down." There are radio stations now that tell you where the radar traps are anyway. Whether it's somebody stopping you in the flesh or whether it's going to be the machine, radio stations are going to tell you that it's at this particular point, and slow down. I think that over a duration of time you will.

I really, really want to stress the point that this is a pilot project. We're talking about a six-month pilot project. We've said in the Legislature, and the minister has made it perfectly clear, that if it doesn't work in six months and the statistics don't work and we don't solve anything, then we'll stop it.

How can you go against that? We'd like to get to clause-by-clause this afternoon. We've also made it clear to the critics opposite that we have the opportunity, if they confer and concur with us, to have people come before us up until midnight, if that's what you want to do. My colleagues are prepared to do that, and we'll reserve that for next Thursday. In the six-hour time block, in 15 or 20 minutes, a procession, we'll bring them in if that's what you want. We'll sit until midnight if that's what you want. We're trying to be as flexible as we can.

We have the benefit of many people from the Ministry of Transportation this morning who are the experts. I am not and I don't purport to be. We have people from the Attorney General's office who have worked diligently on this for so many months. We have an officer from the OPP who is here this morning to answer any questions. We're ready to get down to business when you are.

We don't take this lightly. We believe the province of Ontario is ready for it. I think in your heart of hearts that you are too, but I would ask you not to stall.

Mr Turnbull: There's no stalling from us.

Mr David Johnson: We're being asked, how can we stall? How can we oppose a six-month test? I guess another question that could well be asked of this committee, of this government—of any government, frankly—is, how can you not listen to the people? That's basically what's being said. That's basically what Mr Turnbull is saying and that's basically, I think, what the report of the subcommittee is saying, that there just isn't enough time to deal with this.

Mr Turnbull has brought forward a list of over 100 people who are concerned about this, and there are people who want to speak on this issue. What is the rush? Why is it so important to put this through? Why isn't it equally or more important to set aside a few days, a reasonable period of time, not one week from now? Give people a proper time to adjust their calendar, to make preparations and come and speak. There could well be some good ideas. You'd be surprised. I've never met a level of government before that wouldn't allow people to speak when they want to speak.

Interjection.

1120

Mr David Johnson: Yes, people want to speak. Why can't we set aside a period of time to let them speak?

We have letters here that come from all across Ontario, as far as I can see. I've only got partway through them, but I'm looking at one here from Brampton now. There's another one from Guelph; Oakville, Kitchener. This is not one focus group that has been lobbied, apparently, and is sending in letters of concern. Here's one from the city of Toronto. I'm just leafing through them. They're coming from all across the province of Ontario. Letters are coming in expressing their concern, and they want to be heard.

I don't quite understand why we wouldn't set aside some period of time to let people have their say. If this was delayed for a month or two, what would be the harm? Isn't there anything we might learn from the people who could come before us? They may have some

valid suggestions; you never know. Sometimes, just when you think you know an issue inside-out, if you allow people the opportunity to come forward and speak, lo and behold, there's something you never thought of.

In addition to that, of course, we have the letter before us that we discussed at great length earlier from the Information and Privacy Commissioner of the province of Ontario. He's expressing tremendous reservations about this. Why wouldn't we let the privacy commissioner come before us and speak to his concerns, and perhaps we could learn from that? But apparently we're not going to have the opportunity to do that.

Apparently we're not going to have the opportunity to speak with the gentleman from Lake Shore Boulevard in Etobicoke, who says, "I watched in horror this week as the government of Ontario invoked closure to attempt to speed the passage of the draconian Bill 47." The first point he makes in his letter in bold says, "It will have no impact on road safety."

I read the column from the Toronto Star. I guess we've all seen that a couple of weeks ago: Jim Kenzie, the columnist in the Toronto Star. Part of what he says is: "Let's remember we're not talking 'traffic safety' here. We"—and that is, I presume, him and the Toronto Star—"have pointed out several times, most recently in Wheels on June 16, 1993, that speed limit enforcement has never been shown to have anything but a negative correlation with crash frequency."

I read statistics, during part of the debate, from Metropolitan Toronto which showed that the number of accidents had been declining over the past several years. Traffic accidents are actually at the lowest rate now in Metropolitan Toronto that they've been in several years, so we're dealing with a declining problem, certainly here in Metropolitan Toronto. I don't have the equivalent statistics from across the province of Ontario, but I'll try to get them.

At any rate, the point is, what is the rush? Why can't we set aside a reasonable period of time, not cram it into some Thursday afternoon on the shortest of short notice when people probably wouldn't be available, and listen? I've never been involved with a level of government that wouldn't do that, frankly, and it just puzzles me entirely. I don't think any great terrible event would happen if we just let people come forward and speak.

I understand this is a subcommittee that's composed of members of all parties. I thought it was a unanimous resolution from the members from all parties, including the government side, that when they looked at this, it just doesn't work. You've got a choice to ram it through or you've got a choice to do it right. What I've found is, in the final analysis, it's always better to do it right. Listen to everybody. You may not agree with what they have to say, but listen to them. In the final analysis, you may find there's some little bit of truth in there that will help and will make this thing work better. I certainly will be supporting the subcommittee's report.

Mr Daigeler: Speaking as the Transportation critic now, I think what we're dealing with right now is the subcommittee report. I certainly have some very strong feelings on the bill itself. I expressed those in the House

and I'm sure I'll get an opportunity again to speak to the merits or non-merits of the bill.

However, if I understand right, what the minister and the government House leader very reluctantly agreed to it seems to me was two days, which obviously is a very, very minimal time, to give the public an opportunity to at least say something about this bill. I certainly agree with Mr Johnson: Why not at least give some opportunity to the public to be heard on it? What is the rush on this matter?

But when I look at the clock, we are already, and I checked with the clerk, into the first day of those two days that have been allocated to us. So I have the hardest time seeing how we can still—there has to be some notice to the public that they can be heard at this committee. How are we going to do that, since there's only this afternoon and then possibly next Thursday morning? I think at noon we already have to start looking at clause-by-clause, according to the motion from the House that guides this committee.

I think the motion from the subcommittee probably sums up best the situation this committee finds itself in right now: that if there ever was any intention from the government side to provide some opportunity—by the way, from my point of view, a very limited opportunity—for the public to be heard on this, even that is no longer there because given the time frame we're in, all we can do is possibly read the many, many letters that I as well have received from concerned citizens from across the province.

But how we could still do the proper advertisement to the public and hear them and also possibly listen to ministry experts as to how they see this bill and why they feel this is the proper way to go—I think this committee is being put in an impossible situation and therefore I think the subcommittee report is the one we should adopt.

Mrs Mathysen: I'm interested to note that while the opposition keeps calling for more time, they keep repeating the same arguments over and over again. We're not hearing anything new.

I think the bottom line here is that photo-radar is a safety mechanism. We know, despite the fact that perhaps the incidence of accidents is declining, that 90,000 injuries occur on Ontario roads every year. That's significant. We also know that people will be advised in advance where the photo-radar is. They can choose to obey the law or they can choose to speed, but there is a choice there.

Also, I would like to remind the committee that as parents—I am the mother of a teenager who, God help me, will some day soon be driving. I can tell you that when I was 20 years old, I thought I was invincible too. I saw many friends of mine get into automobiles and experience personality changes. The meek, mild-mannered human being, within a block of home, would drive in a reasonable way, and as soon as parental vision was no longer there, something horrendous would happen.

On one occasion when I was teaching in a secondary school, students left the school in an automobile, went to a neighbouring school and decided that for the entertain-

ment of the students watching out of the windows they would speed up and down the street. Those three children were dead within minutes because they lost control of the car. Nothing the opposition can say about individual rights and charter rights will bring those three children back.

When someone in an automobile behaves in an irresponsible way and kills someone else or someone else is maimed, that individual is charged with a criminal act. An automobile can become a lethal weapon. It's a ton and a half of potential lethal weapon. Some responsibility has to be taken by those who own them in regard to who is driving them. Parents have to know, if they are lending that automobile to a child, that the child is behaving responsibly. I can tell you that if a picture of my automobile was produced that indicated to me that my child had behaved irresponsibly, I would be very grateful to have the chance to say, "I'm taking away your privileges so that you will live another day."

We have to get on with this, so I say we vote on this subcommittee report. I ask that we call the question.

1130

The Chair: Mrs Mathyssen has moved that the question now be put.

Mr Turnbull: Mr Chair, I—

Mr Fletcher: It's non-debatable.

Mr Morrow: A point of order, Mr Chair.

The Chair: It's not debatable.

Mr Morrow: Thank you. That's all I wanted.

Mr Turnbull: They're cutting off all debate.

The Chair: Mr Turnbull, you're out of order.

Interjections.

Mr Turnbull: You don't understand the meaning of democracy. You've babbled on about—

The Chair: Order.

Mr Turnbull: You haven't talked about the fundamental question of how it's being allocated.

The Chair: Mr Turnbull.

Mrs Mathyssen has moved that the question now be put. I find that motion in order. All those in favour? Opposed? The motion is carried.

Shall the subcommittee report carry? No. Mr Turnbull's motion to adopt the subcommittee report is lost.

The Chair is in at least some small quandary here in that the Chair needs some instruction on how we are to proceed in committee. We have the instructions from the House, but they do not delineate the orders of procedure.

Mrs Mathyssen: I'd like to make a motion that we hear opening statements from the parliamentary assistant and the critics from both opposition parties and then move to clause-by-clause consideration of Bill 47.

The Chair: Do you have a copy of that, by any chance?

Mrs Mathyssen: A rough copy, yes.

The Chair: The clerk would appreciate it. Mr Turnbull has indicated an interest in speaking, and Mr Daigeler.

Mr Turnbull: During the brief discussion on the subcommittee's report, all the government's discussion centred on why it thought photo-radar was a good thing. They absolutely, studiously ignored the fundamental question that was brought forward, that there wasn't sufficient time being allocated to this committee to be able to do even adequate justice to clause-by-clause.

The number of people who want to appear before this committee is legion. The implication for this government, or the next government by the time it works its way through the court system, is that there are going to be court challenges. Interestingly, the Attorney General has already admitted and agreed that there will be constitutional challenges.

We have had a letter from the Information and Privacy Commissioner to indicate that he believes this legislation is wrong. We've got quite Orwellian developments going on in this province and the government is violating its fundamental platform in the last election that it will be an open government. How can you possibly have an open government?

The suggestion by Mr Dadamo, the parliamentary assistant, is absolutely preposterous, that we can have proper public hearings, because I will put to you, Mr Chair, first of all, that members of this committee—I cannot speak for the members of the Liberal Party, but I know of the Conservative Party—are booked for tonight. We can't sit till midnight tonight.

Furthermore, I will say that on the second day of hearings we are directed, Mr Dadamo, by the motion that was put forward by your own House leader. Let me read from it:

"At 4 pm on that day, those amendments which have not yet been moved shall be deemed to have been moved and the Chair of the committee shall interrupt the proceedings and shall, without further debate or amendment, put every question necessary to dispose of all remaining sections of the bill and any amendments thereto."

If I understand correctly, Mr Dadamo is suggesting, "Oh, we could sit till midnight tonight," and he thinks that would be adequate public input. There will be no advertising, there will be no opportunity for people around the province to have input, and I would suggest to you that this violates your fundamental election platform, that you would be open.

You have spoken at length about your reason why you believe you need the legislation. You have absolutely ignored the fact that the people have not had a chance to speak. By your own words, you have tied yourselves in knots suggesting that we can sit till midnight when you know quite well that the direction to this committee is that we put the questions at 4 on the second day.

We've already had a very serious breach that we've debated at some length this morning that the Chair has reserved judgement on and that, without rehashing what was debated there, revolved around the release of information of a very serious charge that the privacy commissioner has serious doubts about this process.

How can you possibly live with yourselves, the members of the government? I particularly think of Mr

Morrow, who has probably been one of the two most valiant people in the government, speaking out against wrongheaded decisions of this government when it has violated its election platform. I don't agree with your party, but I respect the fact that you won the government. But when you violate the fundamental principles you ran on in the election, you have to stop—I see Mrs Mathysen is making some strange face. Perhaps you didn't read your election platform, and perhaps you didn't read or listen to what the Premier said when you were sworn in. We were told by the Premier of this province that he believed in free and open government. What could be further from open government?

Mr Morrow: On a point of order, Mr Chair: Although I'm very interested in the comments the member across has, can you please bring him back to the motion at issue?

The Chair: I would indicate to all members that we are to be speaking to the motion in front of us and that we are to speak through the Chair.

Mrs Mathysen: Mr Chair, it's been my experience that the members opposite are very good or very prompt at bringing unparliamentary conduct to the attention of the Speaker. Although I do appreciate the criticism of my physical appearance, I don't find it appropriate in these circumstances and I would ask the member opposite to respect that.

Mr Turnbull: What is this? It's a—

The Chair: Order.

Mr Turnbull: She pulled a face. She pulled a face as she turned away. If she doesn't have the intellectual integrity to admit that—

Interjections.

Mr Wessinger: It's politeness to act like a human being.

The Chair: Order.

Mr Turnbull: Oh, don't be so pompous and silly. She pulled a face.

The Chair: Order.

Mr Fletcher: Your party did the same thing with Jean Chrétien. Remember those commercials?

Mr Turnbull: My party did nothing of the sort. You're an idiot.

The Chair: Order. We will reconvene at a quarter to 12.

The committee recessed from 1139 to 1147.

The Chair: Mr Turnbull, you have the floor.

Mr Turnbull: To conclude my comments, there is nothing that the government has said which counters the argument that there isn't any time being allocated to public hearings. We are being ordered on the second day of sittings to complete clause-by-clause, starting at 4 o'clock, and there will be no further debate.

Since the government has decided to fundamentally play with the whole process of open comment from the public, then quite frankly it had better order the business as it wishes. We will make no further comment on that. We will comment as we go along clause by clause. They

can live with the consequences that they have allowed no public input on a bill which, by the Attorney General's own admission, is subject almost certainly to a charter challenge. There will be a cost of many, many millions of dollars to the taxpayers of Ontario to fight that challenge, but by the time it works its way through the courts, it will be another government which will have to fork out the money, because this government will undoubtedly have been swept away.

The suggestion that this is only a six-month program is completely undermined by the fact that there's absolutely no sunset clause whatsoever in this legislation, so that goes out of the window.

I will further want to put on record that the government's motion precludes any committee-of-the-whole hearings of this so that there can be no further clause-by-clause debate. How you can do adequate justice to a bill as long as this in two days—it's going to be one and a half days now of clause-by-clause—is quite bizarre, and yet they don't even allow for clause-by-clause in committee of the whole. That is draconian government. It is a government that doesn't understand the freedom of the public to speak out against obnoxious legislation. By the bulk of letters—I will be reading in many of these letters as we go along—it will show the depth of feeling of the public on this kind of Orwellian legislation. There is no doubt that this government will undoubtedly fall, and this will be one of the nails in your coffin. Sir, I'll tell you, I will dance on that day when you get thrown out.

Mr Daigeler: Speaking to the motion by Mrs Mathysen, as I said earlier in my comments on the subcommittee report, it was my understanding when the minister spoke in the House—I think he misspoke himself, frankly. He did say in the House that there would be some public hearings, and I think he probably regretted that because I don't think there were any intentions to hold public hearings. Nevertheless, since he said that, then the government House leader, in order to save face, had to try to arrange something that could at least give the appearance of having public hearings on this matter. I think this is how this all came about.

Clearly the government has realized that it is not possible within the time frame that's available to us to hold public hearings and is now moving to simply have presentation by the ministry and then move immediately into clause-by-clause, because that's the motion. The motion does not provide, if I understood correctly, and I stand to be corrected, for a period of public hearings. It simply says we'll have presentation from the ministry and then we move into clause-by-clause.

This of course is highly unusual and, as was indicated several times, does not give an opportunity to the public to be heard on an item which is obviously very controversial and where people are just beginning to realize what is happening and are sending us all kinds of letters and comments. As was indicated, we now have, from some very important people, comments that raise very serious questions about this matter.

I think Mr Dadamo, as parliamentary assistant, made a remark to say that, well, it's not that important; it's just an experiment. I disagree with this comment, because we

are changing the bill. Once the experiment perhaps goes wrong and the government is not satisfied with the experiment, still the law will have been changed and will be in effect.

We are still dealing with a serious piece of legislation. We're not dealing with an experiment of legislation; we're dealing with a real piece of legislation on which the public still wants to be heard. This motion that we currently have before us by Mrs Mathysen does not provide for any kind of opportunity for the public to be heard, other than presumably through the opposition members. As we have indicated already, we have received numerous letters, phone calls and visits from the public, and we will certainly, both at the committee level and in the House, still try to read those comments into the record so that at least the general public will be aware of what other people feel on this issue.

In view of the fact that I think the motion we have before us defeats the very purpose which had been set out by the minister and by the government House leader when they referred this matter to us, I think we ought to defeat it and we ought to provide still an opportunity for the public to be heard on this matter.

The Chair: Further discussion on Ms Mathysen's motion? Shall Ms Mathysen's motion carry? All in favour? Opposed? Ms Mathysen's motion carries.

In view of Ms Mathysen's motion that is ordering the way we do the business, is it the parliamentary assistant's wish to commence now, or does he wish to wait till 3:30 this afternoon?

Mr Dadamo: I would think this afternoon.

The Chair: Then a motion for adjournment until 3:30 would be in order.

Mr Morrow: So moved.

The Chair: All in favour? Carried. The committee stands in adjournment till 3:30 this afternoon.

The committee recessed from 1155 to 1546.

The Chair: The standing committee on general government will come to order. Would the members come to order, please.

This morning, Mr Turnbull raised a point of privilege in this committee. I indicated this morning that I would reserve my ruling. I'm now prepared to rule. I have reflected on the submissions that were made to the committee this morning on the question of privilege. I've also consulted with officers of the table and the clerks.

I may deal with points of order as they arise, but neither the committee nor myself has jurisdiction to deal with matters of privilege in a substantive way. Only the House, on report of committee, may deal with matters of privilege that arise out of the committee. Therefore, I'm not in a position to make a ruling on the point of privilege raised by Mr Turnbull.

I would cite for my authority Parliamentary Privilege in Canada. It says: "A committee may not commit a person for contempt or breach of privilege. Nevertheless, it may report to the House that, in its opinion, a breach of privilege or contempt has occurred, and ask the House to take action."

Therefore, while the Chairman cannot entertain questions of privilege in the sense that he is not competent to rule on whether a prima facie case has occurred, as the Speaker may do, the Chairman of a committee may entertain a motion that certain events that have occurred in the committee may constitute a breach of privilege or contempt and that the matter be reported to the House. On the other hand, events occurring in a committee, such as disruptions by those not otherwise taking part in the proceedings, may be raised in the House directly. That is my ruling.

Mr Turnbull: Mr Chairman, I regret your ruling. I respect your reasoning for it. I would like to give my colleague Mr Daigeler, who is undoubtedly an honourable man, the chance to speak to this, and failing a suitable response from him, I would wish to move a motion.

The Chair: The problem, Mr Turnbull, is that because of the order of the House that this committee is operating under, we can only deal with matters directly affecting Bill 47, because we have a time-allocated space. I will entertain that motion you wish to make when we have finished with and completed the debate on Bill 47.

Mr Turnbull: Does this mean, Mr Chairman, that if there is anything out of order in these committee hearings, because the order of the House is to direct us to photo-radar, we will be precluded from any type of mechanism to address the functions of this committee?

The Chair: No. Points of order are in order; points of privilege are not. It isn't within the competency of myself, as the Chair, or the committee to make those decisions. Certainly, any legitimate point of order will be ruled on. Otherwise, we are dealing with Bill 47. We really shouldn't be debating this. We should just deal with Bill 47 as we are ordered to by the House.

Mr Turnbull: I regret, Mr Chairman, that in that case I will have to move a motion that Mr Daigeler be removed as Vice-Chair.

Mr Fletcher: You can't.

The Chair: I just said that the motion may be in order, but it won't be in order until we're finished with the debate on Bill 47.

PROVINCIAL OFFENCES
STATUTE LAW AMENDMENT ACT, 1993
LOI DE 1993

MODIFIANT DES LOIS EN CE QUI CONCERNE
LES INFRACTIONS PROVINCIALES

Consideration of Bill 47, An Act to amend certain Acts in respect of the Administration of Justice / Projet de loi 47, Loi modifiant certaines lois en ce qui concerne l'administration de la justice.

The Chair: The parliamentary assistant is scheduled to make his opening statement to the committee.

Mr Dadamo: Mr Chair, thank you. We were set to do that this morning. Although there was a little ruckus this morning, we're finally getting to this.

Mr Turnbull: Mr Chairman, excuse me. I'm troubled by your ruling because this has a direct impact on Bill 47.

The Chair: You are debating the ruling, which is not

permitted, Mr Turnbull. The parliamentary assistant has the floor.

Mr Dadamo: I'm pleased to be here this afternoon, sitting in the chair for the Minister of Transportation, Gilles Pouliot, as we endeavour to begin committee hearings on Bill 47. This is an important piece of legislation, one that deserves the clearest possible discussion.

As we begin, it's important that—

Mr Grandmaître: No transcript of the minister's remarks or the parliamentary assistant's remarks?

Mr Dadamo: Can we make it available to you after we're finished, or do you need that now? I'm sorry, we don't have time to copy—

Mr Grandmaître: To speed it up, this time around I'll give you a break.

Mr Dadamo: So we'll try this three times. Thanks.

As we begin, it's important that we all understand the importance of the legislation, and I want to correct some of the factual errors and spurious arguments raised against the bill. Before we talk any further, we must restate the facts and give ourselves a chance to have a discussion based on the real merits of Bill 47.

Road safety is a complex issue. We can't say that all the 1,100 fatalities on our roads in 1991 had a single root cause and then stamp out that single problem with one piece of legislation. This government is taking a comprehensive approach, identifying leading causes of crashes and addressing them in the most effective way we can.

We have a coordinated plan to make Ontario's roads the safest in North America. Photo-radar is an important part of that plan and by no means the only one. Photo-radar will work in Ontario, as it has in other jurisdictions around the world, as part of a package of measures designed to change driver behaviour. Combined with measures such as graduated licensing of new drivers, RIDE campaigns, seatbelt campaigns and continuing to build and maintain our highways to the highest standards possible, photo-radar will save lives, reduce injuries and cut the \$9-billion cost of collisions each year.

To those who say photo-radar does not save lives, I refer you to the experience of the state of Victoria in Australia. In Victoria, a package of road safety measures including both graduated licensing and photo-radar reduced traffic fatalities by 47% during a three-year period.

We can't target every infraction that takes place on our highways, but we can identify those most likely to cause harm. Speeding is not the harmless adult sport described during the debate on Bill 47. It's not a national pastime. It's not a right given free people. It is a proven killer.

Here are the relevant statistics. In fatal collisions, speed is the most common driver error. Approximately one in six fatal crashes is caused by speeding, driving too fast for the prevailing conditions, including weather, road conditions, road design and traffic volume. We have to stop enjoying the thrill of going faster, because there is no doubt that the faster you drive, the harder you crash and the more damage you cause.

I know people in Ontario are concerned that photo-

radar will be used to trap good drivers going a few kilometres over the speed limit, so let's put that fear to rest. First, we're committed to a public awareness campaign to make sure drivers know we are using photo-radar and we mean business. One component of this campaign will be highway signs. We're not out to trap speeders any more than we're out to trap people who don't fasten their seatbelts. We are out to save lives, and we believe we can do that by making sure that people obey the speed limits and that they buckle up.

Photo-radar's opponents say the cameras will be set up in traditional fishing holes or even hanging from trees. That is not the case. During the pilot project, the cameras will be manned. Police will use photo-radar where speed is a significant contributing factor in crashes. The Ministry of Transportation will identify those areas.

Second, police will have the same discretion in setting photo-radar cameras that they now have in pulling over speeding drivers. Under English common law, it's up to the police constable whether or not to lay a charge. We are not interfering with that principle. Police will decide what speed they program into the computer, based on a range of factors such as the weather, road conditions and traffic volumes.

It is important to emphasize that drivers who routinely move at safe and reasonable speeds have nothing to fear. There's an international traffic speed measure called the 85th percentile that makes a good guideline for the drivers. If your speed is not only above the speed limit but actually higher than 85% of the vehicles on the road, that's when you can expect a photo-radar ticket in the mail.

We've heard some incredible pieces of misinformation about this legislation. We've been told there's a constitutional challenge to Alberta's photo-radar. The fact is, the two court challenges in Alberta were resolved some time ago. Convictions were upheld in both those cases. Photo-radar has withstood the challenges. There are no constitutional challenges that are outstanding.

We've been told that photo-radar will take police off our highways. On the contrary, it will allow police to do their job safely and also more effectively. We're not eliminating police radar or patrols. An officer will still be there for drivers who need the human presence of an officer pulling them over. The officers will be there for people who aren't motivated to obey the law by the simple desire to take their share of responsibility for road safety, and they will be there to stop the problem drivers: the tailgaters, improper lane changers, impaired and aggressive drivers. I repeat: Photo-radar is only one component of a comprehensive, coordinated program to increase safety.

Opponents of this bill have said that the police should target aggressive drivers, drivers who cut across three lanes of traffic in one motion without signalling, for example. But police are targeting aggressive drivers with photo-radar. Aggressive drivers put themselves and others in danger with a whole range of reckless actions, including speeding. Unfortunately, drivers have come to believe that they can speed on our highways without being caught. Photo-radar dramatically increases the likelihood

that they will be caught, and that's why we believe it will improve driver behaviour. We believe that one day speeding will be as socially unacceptable as drinking and driving. Just as new drivers today automatically buckle their seatbelts, they will also choose not to speed.

We've been told this legislation throws out the Magna Carta. This complaint arises because we bring absolute owner liability into effect for photo-radar offences, so let's be clear about this: Absolute owner liability is not a new tool in the Highway Traffic Act. It has always applied to parking tickets, and that's only one example of several other existing uses in the act. A parked car can't kill anyone, but a speeding car can. If we can use absolute liability to deter illegal parking, it seems only right to use it to save lives by deterring speeding.

Some speakers complained that drivers speeding to the hospital in a life-or-death emergency will be ticketed by photo-radar and have no recourse but to pay the fine. In fact, they will have recourse. We have learned from the experience of other jurisdictions that we'll need a 1-800 phone line for questions about photo-radar notices, and we will provide one. We can reassure the public that there will be a process in place, a way to contact the court, resolve your questions and ensure that legitimate explanations are made.

We've been told that plumbers and veterinarians could lose their licences to practise their professions if they don't pay their traffic tickets. The truth is that Bill 47 only affects suspension of drivers' licences for fines related to the operation of motor vehicles.

We've heard also that photo-radar will infringe on the privacy of innocent people, but in fact photo-radar will photograph only the speeding vehicle and the plate. It is not intended to photograph people in the car, nor vehicles driving within the speed limit. It's designed that way to protect privacy.

Some speakers said that vehicle owners will forget who was driving the vehicle at the time of the offence because notices might take three months to serve. In designing this project, we have set a requirement that the notices will be issued quickly. We will be doing our best to have photo-radar notices issued and delivered not more than one week after the offence takes place.

1600

We've been told that road deaths are decreasing anyway, so we don't need photo-radar. Surely 1,100 deaths and 90,000 injuries are still too many. Eighty-five per cent of collisions are caused by driver error, and speeding is the most common driver error in fatal crashes. If we have the tools to change those numbers, we have the responsibility to act.

Again and again we have been told that the speed limits in Ontario are so low that they are a joke, that they're artificially low. First, Ontario's provincial road speed limits are consistent with those freeways and highways in other North American jurisdictions. They were lowered in the 1970s, but not as a result of the energy crisis. They were lowered for safety reasons, and they stay that way for safety reasons.

The engineers who design Ontario's highways will tell

you that our provincial speed limits are very, very real. It's true they design highways that can be driven at higher than the posted speeds, but only when conditions are so favourable that they only design features of the highway to govern the speed of the operation. What that means is that you can drive at the design speed when there are no other factors to consider: when the road is in pristine condition, when the weather is dry, when the traffic is minimal, when visibility is perfect. If our posted speeds were equal to design speeds, this built-in safety buffer would be lost.

Ontario drivers must realize that they are surrounded by variables and unknown factors every day. They never know when they're going to be hit by debris on the road or animals crossing or when a tire will blow. They can never count on the skills or even the safe behaviour of the drivers around them, including aggressive, impaired and inexperienced drivers. There's no doubt that if you drive at the design speed for a road, you remove the safety buffer. You take away your margin of error.

The majority of drivers maintain a speed they believe the authorities will tolerate. If we raise speed limits, eliminating the safety buffer, most drivers will in turn increase their speed to the maximum or more. But this time they will have no safety buffer, no margin for error, no chance to take preventive action, no chance to correct their own mistakes before it's too late. I want to go on record to make it clear to all Ontario drivers that our speed limits are real and necessary, and obeying them will save lives.

We've been told the Royal Canadian Mounted Police say photo-radar is just a revenue-generating scheme. For the record, the RCMP has never set out any such position. In fact, the RCMP has confirmed it does not have an official position yet on photo-radar.

We've been told that car rental companies will have to pay speeding fines. Right now, car rental companies have a system in place for parking tickets, requiring the driver to pay the fine. We plan to consult the industry and we expect that it will create a similar system to cover photo-radar systems.

Opponents of this legislation have ignored the fact that by streamlining our justice system for minor offences and improving enforcement of our laws, we are acting to protect the innocent, not entrap them. All we are trying to do is duplicate the successes of jurisdictions around the world in reducing those fatalities. For those who think that Bill 47 is about generating revenue, we can only say, please obey the law and we will not generate a dime.

As we continue, I hope we can begin a factual discussion on the potential this legislation has to save lives in the province of Ontario. I thank you.

Mr Daigeler: Let me say, first of all, that I welcome the comments from the parliamentary assistant. However, I think it would have been most helpful if those comments had come a long time ago.

The parliamentary assistant, I think for the first time, touched on a number of issues that have been out there in the public's mind and that had been raised in the House for a considerable length of time. I think it is

really unfortunate that we're only now hearing some of the views that apparently the ministry has.

First of all, the proper time to bring forward these kinds of points that were just made was at the time of the introduction of the bill. As I indicated in the House, we never got any extensive briefing from the ministry on that. It was part of this general safety package that was put forward by the ministry. Perhaps it would have been quite helpful for everyone, the public included, to have some of these viewpoints put forward. I'm not saying that I agree with all of them, but at least we have a reasoned argument we can deal with.

On the other hand, we have a reasoned argument that right now we have no record of. It's a little bit difficult on a number of important and technical points to follow all of this orally. I certainly very much look forward to the written comments by the parliamentary assistant. This is the normal practice of the House, that as the minister or the parliamentary assistant speaks, we receive the remarks in writing. I guess that's an indication of how hastily this matter was prepared, that we don't have these comments in writing in front of us.

These comments very clearly indicate that you know this matter needs some discussion and some debate still, and makes it increasingly un-understandable or unbelievable why the government is so intent on pushing this through at this time and before Christmas. If this really is a safety measure, why all of a sudden has it become such an important matter?

I know that on the graduated licences the minister introduced just yesterday, there's been work on this in the ministry for more than four years. I know that my colleague raised it already, I think more than two years ago. When we were still in government and I was a backbencher there, I raised it with our own Ministry of Transportation and Communications, and that was as early as 1989. If we're talking about saving lives, the graduated licence program surely is a much more important one than this particular initiative. How long did we take on the graduated licences? It took almost four years and perhaps even longer to come forward.

I am just not convinced at all that this matter is so urgent and that right away this would be saving lives and would lead to a significant improvement in the safety of our drivers. I just cannot accept that argument and that reasoning at all in view of what we have experienced from the graduated licences.

I can, on the other hand, understand a little bit where the pressure is coming from. We in the opposition obviously are sceptical, but we know that just before Christmas, the Treasurer wants to make very sure that he has all his finance bills in place and that when he prepares his budget for the new year, he tries to get an assessment as to what kind of revenue he's going to have.

Mr Grandmaître: A few ornaments on the Christmas tree.

Mr Daigeler: Yes, if they're still allowed, the Christmas tree ornaments.

Mr David Johnson: Read Hansard.

Interjection: They disallowed that one.

Mr Daigeler: I remember, when I was parliamentary assistant for the Minister of Revenue, we were encouraged to try and pass a number of money bills because they were affecting the next fiscal year, and they understand that.

That scepticism on the part of certainly my party, and I understand on the part of the Conservatives as well, frankly was fed by the government's own bureaucrats yesterday when the deputy House leader, in his famous intervention yesterday, referred to this publication, the *Topical*, that has just come out, published by the Management Board secretariat.

1610

What does the lead story in the government's own publication say? It's the November 19 issue. I'm now reading into the record the government's own publication. Here's what this gentleman who is writing for the government publication, Gord Murray, is writing:

"The best route to increasing revenues is to launch and market new services and expand product sales, he stressed." He was referring to a Mr Vrancart, assistant deputy minister for the Ministry of Natural Resources.

"Naturally, any project that will produce revenue quickly is a high priority for treasury board funding, but the majority of really profitable services and product sales will take a year or two to get up running and bringing in money."

Now comes the real good part:

"A good example is introduction of photo-radar systems in Ontario, part of the integrated road safety program involving several ministries that was announced in this year's budget." You wonder why it was announced in this year's budget.

"It will take some time to get the technology in place and train the police to use it, before fines can start being levied and collected."

Mr Grandmaître: No word of safety.

Mr Daigeler: Forgive me, but it is hard to take the minister and the parliamentary assistant at their word when we hear from the government's own senior officials that there's a definite revenue aspect of this measure. According to what I just read into the record, which is not myself, which is not people of the public out there, although they feel like that as well, but the government's own officials, they are saying, "This was announced in the budget and it's a priority for treasury board funding and it's an example of how the government can make money." This is the headline in *Topical*.

I should say that on the principle itself I think is an interesting concept that deserves some consideration, whether the government itself should rearrange the way it provides its services in a way that charges people for the service provided and perhaps raises some revenues. I don't deny the significance and importance of reviewing how government does its business and whether there's room, with things we traditionally have simply provided—whether there ought to be some way to market them. This is really moving a little bit off Bill 47, but I do know the public school board in my area has established a marketing corporation and it's marketing some of

its services and making money that way. But they very clearly acknowledge and recognize that's their objective.

I think we want to see very clearly and very forcefully from the ministry and from the minister and from the parliamentary assistant why all of a sudden this ministry official is not right. I look forward perhaps to some comments from the parliamentary assistant in this regard.

That famous letter that was referred to this morning from the privacy commissioner obviously raises a number of very, very serious concerns as well that really need some detailed consideration and answers by the government. Again, it isn't just some member of the public, although we shouldn't denigrate the significance of the individual people out there who are sharing their concern with the government. But here we have somebody whose specific mandate is to protect the integrity and the privacy of our people and who frankly, in what I consider a rather unusual step, is concerned enough about this matter to bring this to the attention of the committee and of the government to say he has some very serious concerns that this measure will or might seriously infringe on the individual freedoms, the freedom of information and privacy, which he has a special authority and mandate to watch over.

I don't think we can just simply pass over this. Frankly, if we didn't have at least this session, we probably would never have been given a chance to raise these matters and these concerns by Mr Wright as at least we have now. I certainly do hope the parliamentary assistant will be addressing these concerns, because they're very serious. The privacy commissioner is saying he certainly shares the concern for safety, but at the same time there has to be a balance and there has to be a proven connection between this measure, the safety of our people, and the possible infringement on the rights of Ontario citizens. I certainly think we need some very strong affirmation and responses from the parliamentary assistant, and I certainly will review very carefully the remarks he just made when I receive them in writing.

As I said earlier this morning when we discussed the subcommittee report, the parliamentary assistant mentioned this morning—and I think he mentioned it in the House as well; I can't remember, because the debate went on at some length. But he certainly mentioned this morning that this is just an experiment and that if it doesn't work, we won't continue it. What is it that will work or won't work? What is the criterion by which the government will say, "Yes, it worked"? Is it in fact going to be the safety criterion? Are you going to say, "The accident rate in this location dropped that much after putting in place a photo-radar camera"? Is that what you're aiming at? Is that the criterion, that if there's a very significant impact on the accident rate in this location, then we will say it has achieved its purpose? Or is it going to be, "Well, we certainly caught a lot of speeders"? Frankly, I'm just concerned that the consideration is going to be that the Treasurer is going to say: "It's been very successful. It's been a very good experiment. It's been a very worthwhile experiment, because we've been counting on this revenue in our budget forecast"; that he has brought it in and probably even sur-

passed it. I'm concerned about what the criteria are by which the government is going to say this experiment was worthwhile or it wasn't.

Perhaps more importantly, as I already mentioned this morning, how can you have an experimental bill or an experimental law unless, and I have seen no such amendment to that effect, the government would say, "Okay, there's a sunset clause in it and we'll just pass this bill for half a year," and so on, and then it dies unless it's renewed? I don't know precisely how this would work, but I have seen other bills that did have a sunset clause—not quite for half a year, because you know how difficult this legislative process is; it takes a while to pass laws. That's why I say once this particular bill is passed and put into law, I think the experiment is going to be over and the government is going to have the authority to proceed with this and there's no longer going to be any kind of consultation of the public and any kind of consultation of the Legislature. The government will simply proceed with it at its own discretion. I've already said what I suspect this discretion to be.

1620

As we have indicated in the House, there are a number of serious concerns that have been brought to our attention. Some of the concerns that were brought forward both by myself and by my colleagues in the third party, the parliamentary assistant—and I give him credit for that—has finally tried to address in his opening statement. For example, with the car rental agencies, obviously they're very concerned and have approached us. They have mentioned this even in the press, that they're very concerned that they might be stuck with all the speeding tickets and the fees associated with them, even though obviously they're not at all the ones who speed.

If I understood the parliamentary assistant right, he's saying, "Yes, we appreciate that concern, but we're going to work something out, something similar to the parking fines." But I didn't hear anything very firm. Again, it would be something that under normal circumstances you would make sure is in place before you proceeded on this matter.

It is really unfortunate that we don't have an opportunity to address all of these things among ourselves and especially with representatives of the public and that we couldn't say to the public: "Okay, here are some of the concerns that you've raised. Here is the answer from the ministry, from the parliamentary assistant. How do you feel now?" Frankly, I would like to do that, and I would have appreciated being able to question the witnesses in that regard. I would have tried to be fair and say: "Okay, this is your concern. This is the answer from the ministry. Do you still feel that strongly about your concern?"

Certainly we on this side of the House would have been prepared to do that, but obviously the opportunity is not there. I think this is most unfortunate, because I'm sure there aren't many people out there who will be following the proceedings of this committee and who will ever hear of what the parliamentary assistant said or what he will further say in response to some of our questions and concerns.

At this point, in fairness to the public, I have to at

least put on the record some of the very serious concerns that have been brought forward to the government directly, with copies to us, to myself and to the Conservative Transportation critic, and some letters that I have received independently that were brought to my attention. All of them except one were very, very critical.

Frankly, some of the language that was used in some of these faxes and letters goes beyond what I would normally observe despite my willingness to be quite tough on the government. Some of the words I don't think I'd want to repeat here. But what is the message? The message is that when the public heard about this measure, they were extremely concerned. They said:

"I strongly oppose the passing of Bill 47.... The fact that demerit points have been done away with, and fines are now automatically imposed, strengthens the argument that governments are using speeding tickets as a revenue source, not as a deterrent for speeders.

"The law is unfair to those of limited income." That's a consideration that has never been mentioned before. "Consider an overpaid executive...commuting a distance each day. He may consider the expense of a photo-radar ticket as trivial. Since there will be no demerit points, there will no longer be any incentive for him to slow down. He"—and we probably should say "she," but I'm reading from a fax from Brian McGregor and he's using "he." "He can accumulate speeding tickets like some people accumulate parking tickets. Those of limited income will be heavily penalized as a percentage of their annual income."

This is just one. As you can see, I have a whole stack, and so has Mr Turnbull. I frankly haven't counted them all together because there are too many, but my staff said they've never received so many faxes and so many calls and letters as on this particular measure. People are very, very concerned, they're upset and they want some answers. It's unfortunate that they will not have an opportunity through public hearings and a proper debate and with some time—I mean, that's the whole idea about having first, second and third reading, that you give some time for sober second thought, especially if there's no immediate urgency on the matter.

That point, by the way, is made not just by myself but by many of the people who wrote to me. They were extremely upset when they heard that there were going to be only two days of public hearings on this matter. I don't have the particular letters right at my fingertips, but I know they're somewhere in the pile here, where people said, "What are you doing?" In fact, what they said is, "How dare you?" That's quite often what the people say. They're very strong in the words they use, very strong language in order to express their views, and they frankly condemn this initiative by the government. When they heard that there were going to be only two days of public hearings and that it was supposed to be passed before Christmas, with a closure motion and everything else, they got even more upset.

Never mind two days of hearings; we have no public hearings at all now. I am sure all those who have communicated their concerns to me will continue to do so, because those letters are still coming in. I'm sure they're

going to be even more upset when they find out there are no public hearings whatsoever and that we're simply moving into clause-by-clause without hearing from the public and without an opportunity for the minister and the parliamentary assistant to explain to the public why they're doing it and what the conditions are under which they're bringing it in and so on.

Frankly, when I look at the amendments, those already indicate that this bill needed some time to be looked at and to be studied and to be reflected upon, because the government itself already is recognizing that some amendments are needed. Really, I think even the government itself is probably glad that it has some time for second thought. Why don't you take a little bit longer time? Why are you trying to rush this through at this time? If it is really a safety measure, as you're claiming, what's the rush? Why don't we take the time to review this properly, look at it, study it, listen to your explanations more and hear the answers that the parliamentary assistant tried to give right now, I presume in response to the concerns that have been raised by myself, by my colleagues in the House and by the Conservative Party?

I do hope we will get very quickly, and hopefully this afternoon so that I can take them with me and study them over the weekend, the remarks the parliamentary assistant just made and that in light of his remarks, I can get an opportunity to see whether further amendments are required and how we can deal with the amendments the government is putting forward.

I do hope I've made myself clear. My biggest concern is the rush with which we're proceeding on this matter. The public is not being given enough opportunity to voice its concerns and an opportunity, and I'm trying to be fair here, to hear the government's side. I do agree they should hear not only the opposition's point of view but should also hear from the government side; then let them make up their minds and communicate their views to us at that time. Up till now, with the exception of one letter, all of the many faxes and letters and calls I've received are very critical and very negative towards this measure, and I think the government is asking for serious trouble by proceeding with this matter at this time.

1630

Mr Turnbull: The opening comments by the parliamentary assistant demonstrated once again that the government doesn't want to listen to the fundamental problem we have with this bill; that is, it is not allowing for the proper public scrutiny of it.

I take great exception to the fact that once again the Minister of Transportation is not attending in person. I even told the Minister of Education and Training recently that while I totally disagree with his approach to most legislation, he always is prepared to go and defend his own position. Frankly, the Minister of Education, who prior to that had Housing, who has had some of the heaviest loads in the government, has always attended public hearings to take it on the chin if necessary and to put his position forward. The Minister of Transportation consistently never attends. I don't think he is capable of defending his legislation. Certainly, when we've asked very serious questions in the House on this issue, we

have not gotten proper answers.

The opening comments by the parliamentary assistant talked about factual errors and referred to the some 1,100 traffic deaths which occur on the roads of Ontario each year. Sir, you will recognize that nobody has been more consistent than myself in pushing for safety measures on the roads, since I have been Transportation critic. You know that consistently it was I who pushed on behalf of the Progressive Conservative Party for graduated licences. I can prove this simply by bringing the Hansards forward. The evidence is overwhelming that we have been pushing for it.

To suggest that in some way we are holding up legislation which will stop traffic deaths is objectionable. I really would like you to think about that. You know that during this summer, both you and I sat on a committee which under very pleasant circumstances travelled this province and heard from various people who were both for and against graduated licensing. We worked cooperatively together to ensure that we would have graduated licensing. Indeed, I'm sorry that graduated licensing has taken so long to come forward, because we've been asking for it for so long.

Yet we have a piece of legislation here which first raised its head a few weeks ago and we're now having closure to get it through. And it isn't just the closure on second reading; that is not my concern. The parliamentary assistant talks about five full days of debate in the House on second reading. First of all, it wasn't five full days of debate; it was five part-afternoons. In the case of one particular day, my colleague Mr Harnick had 20 minutes of debate. So let's not mislead the public by suggesting there have been five full days of debate. That is absolutely, factually incorrect. You talked about factual errors, so I wanted to address those.

If the weight of evidence is that this is good legislation, that it will save deaths, then, sir, I would suggest to you that the evidence will be so compelling that, under the scrutiny of public debate and public input in committee, you will carry the day. Instead, you have moved with the most devious methods of bringing this to the House. You closed down debate at second reading, and then after that you had, within your motion, the fact that—

Mr Drummond White (Durham Centre): On a point of order, Mr Chair: I'm not sure that the phrase "devious" is exactly appropriate to these proceedings.

The Chair: I would remind the member that we should be careful of the decorum and that we should choose our words carefully so as not to impute motive.

Mr Turnbull: Mr Chair, I will point out that I think I chose my words carefully. We have a motion which is forcing us to have two days in committee, and it isn't two days of public scrutiny; it is two days in committee for a bill of some 20 pages long which has some profound implications for the whole carriage of jurisprudence in this province.

I would suggest that to make the owner of a vehicle the recipient of the bill for speeding as opposed to the driver is as flawed a process as making the owner of a vehicle that is taken and used in the execution of a crime

responsible for the bank robbery. It is quite as ridiculous and quite as serious.

We are constantly told by the government that it has such overwhelming evidence that photo-radar is good, and it speaks about other administrations. Well, sir, you're not speaking about administrations such as—and I read from the New York Times Metro edition from Friday, June 12, 1992. The headline is, "Legislators Vote to Ban Photo-Radar for Speeders."

"Trenton, June 11. By 74 to 1, the New Jersey assembly voted to ban the use of photo-radar in automated devices that photograph speeders and send evidence of their transgression in the mail. Protests against the system have been growing since road signs went up in April announcing that the machine would be tested by the New Jersey State Police under a federal grant from the Department of Transportation."

That's what happened in the US. You were very selective in your choice of evidence. The test which has been conducted in BC by the Royal Canadian Mounted Police has been less than the conclusive test that you're suggesting. In fact, my office has had contact with one of the offices involved in that test, and they had some grave concerns with the test. And no, it wasn't public knowledge, but we have indeed checked our evidence.

All I am saying in demanding full and complete public hearings is, if you can outweigh the evidence of the good of this legislation against the evidence that there is something wrong with this legislation, then I would suspect that you would legitimately win the day. In fact, you're going to win the day anyway because, as you well know, you have a majority in this committee and you also have a majority in the House.

After this two days of cursory review of this bill in this committee, it has been ordered back to the House. There is no provision for committee of the whole, so even if you make any mistakes in this bill and find out after the fact you will not have a chance to amend it, so you'd better make sure you've got it right in here—I notice you've already got an amendment that has come before the committee—and then, we have been told, there will be one day's debate.

For the clarity of anybody who will be reading these words after, one day of debate in the Legislature in third reading means that in fact we will have probably two hours of debate after question period. That is the amount of scrutiny this is getting.

I would suggest that what we should be having before this committee is experts: We should have lawyers both pro and con and we should have road safety experts who would bring forward their concerns. I have indeed spoken to one road safety expert who appeared before the graduated licence hearings. Some of the extracts from a note this expert has given us are saying there is debate about whether or not this project will enhance safety.

1640

"Speed in and of itself does not kill. What kills is as follows: speed differentials; traffic flow at 120 kilometres an hour and a car changing lanes at 140 kilometres an hour or, just as dangerous, traffic flow at 120 kilometres

with a car travelling at 80 kilometres an hour.”

Another point is excessive speed. “Travelling at 140 kilometres an hour on a winding, rough road” is a cause. “Inappropriate speed: travelling at 100 kilometres an hour in a 100-kilometre-an-hour zone under adverse weather conditions.”

As you well know, this legislation you’ve brought forward, even though it is a weighty document, doesn’t speak to these very serious concerns.

There is outrage and concern among the public. I fought the last election with a copy of your so-called Agenda for People in my pocket so that I was aware of what you were saying, and you spoke about open government. I fail to see how you prove you have open government with this kind of process. The problem is, you cannot talk about something and make it real. You have to have other actions to demonstrate open government.

I know the parliamentary assistant well as a very, very honourable and fine member of this assembly, and I think he must be profoundly troubled by a process he has to represent where there is no public input into this.

The Attorney General has publicly stated that she believes this legislation will lead to a constitutional challenge. A constitutional challenge will cost money to fight and it will take time. As I have suggested, and I know you don’t like to hear it, I very much doubt that it is conceivable that a constitutional challenge could make its way to the highest courts in Canada in the time you still have left to govern. It will be left for the next government, of whichever political persuasion, to fight this fight and pay for it—not with its own money but with the taxpayers’ money.

There is a very strong body of evidence that suggests that because of the traditions in our law dating back to Magna Carta, we have a right to face our accuser. You take this right away.

When you start speaking about this as a safety measure, I cannot think of a greater safety measure than to have more police out on the highways of this province stopping people who are speeding and are demonstrating inappropriate driving, not just speeding. I can’t think of anything which is more compelling than being stopped by the old bubble gum machine behind you and that long, slow walk of the police officer approaching your car. Your heart is pumping and at that moment you’re thinking about the conduct that led to you being pulled over; you’re thinking about the fact that yes, you were speeding; you’re thinking about your state of mind and perhaps what was distracting you at that moment. It is a very clear lesson that you should not be speeding, and unless you are very irresponsible, I think that lesson will at least last for some length of time.

You won’t have that kind of lesson with photo-radar, because by then you will have forgotten about your state of mind, you may have forgotten about the circumstances, and in fact you may have forgotten who was driving the car.

This leads me to another very important concern: the question that the fine will be levied against the owner of the car rather than the driver. There are some administra-

tions in the US—namely, I believe, Sun City in Arizona—which specifically have allowed the owners of vehicles, if they are ticketed, to file a deposition under oath as to who the driver of the vehicle was at that date, and then the ticket can be directed to the driver.

This is going to have a profound effect on more than just the owner of the vehicle. The car rental companies are very concerned about the levying of fines against them. Mr Dadamo, in your opening comments, you specifically spoke about this. I would direct you to page 12 of the clippings from today’s papers, the Toronto Star dated November 25. It’s headed “Car Rental Firms Lobby to Change Photo-Radar Bill,” and I read from this. “Car rental operators are lobbying the province for an ‘innocent owner’ amendment to pending photo-radar legislation. Without it, rental agencies say, they will be forced to pay out millions of dollars in speeding fines. ‘It’s virtually a licence for car renters to speed and a potential...nightmare for rental companies,’ said Sid Kenmir, president of the Associated Canadian Car Rental Operators.” I have met with this organization, sir, and they are most concerned.

In your opening remarks, when you referred to car rental agencies, you said: “Oh, it’s quite simple. That charge can be passed on to the driver, which is the procedure they go through at the moment with respect to parking tickets.” Well, it ain’t so. If you read further in the article, it says, “Only Scotiabank lets car rental firms charge tickets to customers’ Visa credit cards.” That is the case at the moment with regard to parking tickets. There is a very, very small percentage of all parking tickets the cost of which is ever recovered by those car rental companies. But we’re not talking about a parking ticket of \$20; we may be talking about \$120.

The credit card companies simply will not allow you to put any charge through after the fact. Even people like Scotiabank, if there’s a complaint to them about a charge, then quite simply these credit card companies reverse the charge. That is the case today, and you are compounding the problems of tourism in this province because car rental companies will be forced to increase the cost of car rental, not to the speeders from whom they will not be able to recover it, but to all people who rent. That is singularly unfair to renters, and the problem is that in the highly competitive car rental business we may in fact see competitive pressures such that some companies will simply go out of business. But it doesn’t appear that this is a government that is particularly interested in small businesses being maintained.

We turn to the question of the cash grab aspect of this. The government has fiercely defended the position that this is not a cash grab. Well, it’s very interesting, because on many occasions in debate in the House and in questions in the House, I have challenged the minister that if indeed it wasn’t a cash grab, they would surely be prepared to demonstrate that. The acid test would be to dedicate all of the extra funds you raise through this to added safety measures to be implemented by the OPP and local police forces. Dedicate that money to those police forces. There have been many words spoken in the House and in question period, but the minister, who knows very

well that I have challenged him on this point, has studiously ignored the challenge. I was gratified to read in the *Ottawa Citizen* that indeed Jim Coyle reflected on the fact that the minister had ignored the challenge. It has been uttered over and over again. We all know that these funds will disappear into that black hole called consolidated revenue, never to be seen again.

1650

With respect to the question of this being a cash grab, my colleague Mr Daigeler has already mentioned the article from *Topical* magazine dated November 19, in which it is very clear that the government views this as a cash grab. Snippets out of the front-page article of *Topical* magazine: "Ministries have a significant opportunity to offset some expenditure control pressures by focusing efforts on generating revenues," said Ron Vrancart, Ministry of Natural Resources." Making money hasn't been a priority so far, he explained.

The article goes on to say: "A good example is the introduction of photo-radar systems in Ontario, part of the integrated road safety program involving several ministries that was announced in this year's budget. It will take some time to get the technology in place and train the police to use it, before fines can start being levied and collected."

It's interesting that he talks about this being mentioned in this year's budget. Why do you think it would be mentioned in the budget if it wasn't a revenue-grabbing item?

So the minister has studiously ignored that question, and I would suggest that probably one of the strong reasons the minister is not here today is because in this forum we can ask him questions backwards and forwards until we finally nail an answer from him, but he doesn't like giving answers; he likes to float around all over the place. It is a revenue grab. The minister has ignored the opportunity to deny it.

The question of making the owner of the vehicle responsible has some very serious implications, and not just for car rental companies. It has the implication for parents and anybody who will lend their car, because they will never know what has happened until that little radar sticker comes in, and they may not be able to remember who they lent it to if they have a large family.

There are implications of requiring, under this legislation, those people who have been charged with an offence to appear twice to fight a ticket. If it is their intention to fight the ticket, they will have to attend in person at a court facility where they got the ticket. So if you're travelling from Ottawa to Windsor and you get a ticket in Toronto, a person from Ottawa will have to come back to Toronto for a preliminary appearance and then will have to attend once again here.

I think the government hasn't thought that through very well. If it is the intent of the government to try and improve the court system so that the system is not as jammed, I can understand. I believe the opposition parties would be cooperative in working with you to agree on measures which would help you, but I don't believe this is the way of doing it. All you are doing is you're going

to further block up the courts and you're going to take people a long way out of their way. And if they're taking the trouble to fight the conviction, I would suggest they probably believe they've got a pretty good reason, which brings me to the question of the technical merits of this equipment.

The BC experiment which the parliamentary assistant referred to led to the determination that some of the pieces of equipment that were tested didn't work properly, and they have been essentially ruled out. That doesn't say that the other equipment that you may decide—we've never been told what you would in fact be implementing with, as to how its success rate would be and how it would stand up against scrutiny.

It's quite well known by experts that you can have a situation with two cars running parallel, one of them at a much higher speed than the other, and in fact the wrong car can be photographed under this system. So I put it to you that with a situation like that, where somebody is travelling from Ottawa to Windsor and they're caught on a speeding trap in Toronto and they believe it was unjust and they're lucky enough to be able to even remember the circumstances, which is highly unlikely, they will have to attend in Toronto for the prior hearing. So they'll have to come all the way back from Ottawa just to attend that prior hearing and then again for the final hearing. I don't think you serve the public very well with that.

The speed of implementation of this bill as compared with graduated licensing can leave us with only one impression: that the government will move heaven and earth to get money, but when it is more benign legislation, legislation which is good but doesn't put money into your pockets, then you're pretty tardy in the execution of your duty.

We've heard no evidence that you're prepared to kill this legislation at the end of six months, because indeed the legislation is open-ended and there is no sunset clause whatsoever. If indeed you were interested in this only being a temporary measure, I believe there would be a sunset clause and then you would bring it before this committee for review and public scrutiny. But there has been no suggestion that you would do that.

The question of factual discussion by the parliamentary assistant is rather annoying when you are precluding those experts who would be able to give us factual information from coming before this committee, and indeed you're not allowing us to speak to the privacy commissioner or road safety experts and lawyers pro and con.

I believe this is a very flawed process that we're involved with, one which has caused you a lot of grief and which I believe will continue to cause the government a lot of grief.

There can be no doubt that the Progressive Conservative Party is very keen to ensure that the roads of Ontario are the safest they can possibly be, and we share the goal of making Ontario's roads the best in the world, but we don't believe this is the way to achieve it.

We have particular concern when we get evidence on a daily basis such as the letter which was sent by the

privacy commissioner yesterday. Reading from it, it says, "From a pure privacy perspective, this office is opposed to forms of electronic monitoring or surveillance," which of course brings forward the whole spectre of this Orwellian world this government has brought to us.

Frankly, I'm not surprised that a socialist government would bring us an Orwellian world, because that is the nature of socialism. One only has to read such books as *Lord of the Flies* or George Orwell's books to conclude that the government is set to change the very structure of our society. It's my regret that the members of the government will not be around after the next election to watch us go through and tear up every piece of legislation they have put forward, because I would like to look them in the face and tell them once again how wrongheaded that legislation was.

1700

The Chair: According to the committee's instructions, we will now move to clause-by-clause examination of the bill.

Mr Daigeler: Is there an opportunity to hear from the ministry officials?

The Chair: The instructions to the committee this morning were quite clear, and that is that we move to clause-by-clause at this point, Mr Daigeler.

Mr Daigeler: I did think there would be an opportunity to ask some questions of the ministry officials.

The Chair: As we go through the clause-by-clause examination of the bill, that opportunity may be presented to you, Mr Daigeler. The Chair is bound by the motion of the committee, which said very directly that we will move to clause-by-clause at this point.

I suspect all members have copies of the bill in front of them. Are there questions, comments or amendments to subsection 1(1)? Mr Kormos.

Mr Peter Kormos (Welland-Thorold): Since I'm not a regular member of the committee, I'll defer to Mr Turnbull, but I tell you, Chair, I want to exercise my rights as a member of the Legislative Assembly to participate in this committee's work. I intend to be very brief. I have several questions I would like to pose to the parliamentary assistant, and I trust that in the interests of fairness and democracy, you will accommodate me.

Mr Turnbull: I move that we hear the questions from Mr Kormos to the parliamentary assistant immediately.

The Chair: I had recognized Mr Kormos.

Mr Kormos: Thank you. If I may, Chair, in view of the fact that there is a time allocation motion and that there is a process for deeming all questions to be put on all sections of the bill, I trust you will exercise your discretion to permit some latitude, especially in view of the fact that I'm not here to be dilatory but merely to pose some very direct questions about some very specific sections. Am I fair in that presumption? Thank you, sir.

I appreciate this opportunity to put questions to the parliamentary assistant, who of course is here on behalf of the minister. Indeed, I'm curious about the language contained in the legislation. The reason I prefaced my comments is that I'm skipping ahead, in the context of

the bill, to the photo-radar section, and I put this as a question to the parliamentary assistant.

I trust it will be a defence to a charge under these provisions that one who was the owner of a vehicle was not the operator of a vehicle at that point in time when the speeding took place. Am I correct in that regard, parliamentary assistant?

Mr Dadamo: I would like to start this way. Of course I don't travel lightly: I have staff with me from the legal department and I'd like them to come to the table and help to answer some of the questions. Larry Fox from the Attorney General's office is here, and Ross Burns from MTO. As well, Colin Brittan, who is the superintendent-director of the integrated safety project with the OPP, is here willing to entertain some questions. I'm sure Larry can answer your question.

The Chair: Would you first identify yourself for the purposes of Hansard, please.

Mr Ross Burns: My name's Ross Burns, counsel, Ministry of Transportation, legal branch.

Mr Larry Fox: My name's Larry Fox, counsel, policy development division, Ministry of the Attorney General.

Mr Colin Brittan: Colin Brittan, director of the government of Ontario's integrated safety project.

Mr Fox: I'm sorry, I didn't quite get the gist of Mr Kormos's question.

Mr Kormos: Once again, I trust it will be a defence to a charge of speeding, because that will be the charge, if the owner of the vehicle who has been charged was not the operator of the vehicle.

Mr Burns: No, that is not the case. The offence creates an owner liability for speeding, and the only exemption that would apply under section 207 of the Highway Traffic Act is where the vehicle has been taken without the owner's consent or knowledge or, for example, as the owner is deemed to be the plate holder to whom the plates have been issued, if those plates have been stolen, for example, or misplaced and misused by someone else. We are not attempting in this legislation to identify who the driver or the operator of the vehicle is. It's the vicarious responsibility of the owner under section 207 of the Highway Traffic Act that applies, and the offence notice would be issued to the registered owner of the vehicle, who is the plate holder.

Mr Kormos: I need clarification here, Chair. You mean to say if I lend my Chevy to a friend and she or he speeds, I am culpable in a quasi-criminal tribunal such as provincial offences court?

Mr Burns: You could be charged as owner with the speeding offence under section 128 of the Highway Traffic Act.

Mr Kormos: And convicted?

Mr Burns: Yes.

Mr Kormos: So the only defence then is that the vehicle wasn't there; is that correct?

Mr Burns: Yes, or if they were not your plates or that the vehicle was taken without your consent or knowledge.

Mr Kormos: Or that the vehicle wasn't speeding?

Mr Burns: Well, yes, that would be defence on the merits.

Mr Kormos: Looking at what will be section 205.11 on page 17, that's an instance, as compared to one of the earlier sections, which indicates that a person is basically deemed to have pled guilty if they don't file a notice of dispute which is consistent with the current provisos in terms of a number of regulatory offences.

Mr Burns: Yes.

Mr Fox: It was a change. It's consistent with the philosophy we use that if you get a ticket now and you do nothing, there's a default conviction. If you look at the back of your ticket, you're given 15 days; after 30 days, you'll be found guilty. This provision is mirrored in earlier provisions amending the POA. This refers to someone who has requested a trial and been given a notice of trial.

Mr Kormos: Exactly.

Mr Fox: They've got the system rolling, a trial's been scheduled, they're given the date, the time of the trial, the location; they do not appear for their trial. They'll be treated just like the person who now does not respond and ignores the ticket itself. That is a change.

Mr Kormos: Quite right.

Mr Fox: At present, if you request a trial and you don't show up, there are what we call *ex parte* trials, a trial where the officer runs through his or her evidence for five minutes, and the general result of those things is a conviction.

Mr Kormos: But the justice of the peace has to be satisfied beyond a reasonable doubt that the offence occurred.

Mr Fox: Right, and that is, we think, a wasteful use of court and police resources. Also, you should read 205.11 with 205.13.

Mr Kormos: I did.

Mr Fox: In return, there's a wider right of reopening. Let's say you've got a notice of trial and you get sick or your wife has a baby; you can't show up for the trial. You'll be convicted under 205.11 but you can go to the court and get the conviction reopened. That's an expanded right of reopening, an expanded right to set aside the conviction. It's a balance.

Mr Kormos: There's a relatively summary way to appeal provincial offences convictions now to a provincial judge.

Mr Burns: Yes, but this would be a reopening and an entitlement to a whole new trial.

Mr Kormos: Okay, I'm interested in 205.12, where you refer to the court being satisfied that the interests of justice require it in terms of adjourning a trial for the purpose of calling the operator of the photo-radar system. I trust, parliamentary assistant, that you anticipate and expect that courts will interpret that liberally.

Mr Fox: Again, this is if the person hasn't already been requested. The person who is charged as owner under these provisions has a right to call the operator, and you can see that in 205.8(1).

Mr Kormos: Yes, I'm interested in the phrase,

though, satisfaction of the "interests of justice."

Mr Fox: This would apply to the situation where the person hasn't earlier exercised that right, in which case the officer would have to attend.

Mr Kormos: Quite right, and I'm trusting that you expect that courts will interpret this very liberally.

Mr Fox: I think that would be a fair assumption.

Mr Kormos: And that courts will grant accused persons, defendants, a great deal of leeway.

Mr Fox: Let's go through it. The presumption is, "shall not...unless," so if you're looking at the position of the defendant, the defendant has an absolute right to call the operator. Perhaps the defendant hasn't exercised that right because of a misunderstanding. It would be up to the defendant at the trial to put that to a justice of the peace or provincial court judge.

Mr Kormos: But you intend for this legislation to be interpreted very liberally in this section by justices of the peace.

Mr Fox: It's a difficult question to answer, in the sense that it's for them to interpret.

Mr Burns: It's for the justice to interpret. If the justice requires an adjournment so that the officer or the witness can be called—

Mr Kormos: I understand, but I'm trying to create a bit of a record here that might be of a little bit of use to some people down the road. Here it is: Legislators are being called upon to pass the legislation, and like all legislation, it's just words and it's going to be subject to interpretation. Can we get some clarity now, Mr Parliamentary Assistant? The ministry authored the bill, the government authored the bill. Did it intend in this instance for "interests of justice" to be interpreted very liberally in favour of the defendant?

1710

Mr Dadamo: You know fairly well that I have lawyers with me and—

Mr Kormos: That's the problem.

Mr Dadamo: Just a second, now. What you're doing is a tit for tat in legalese. I'm not going to take you on in that and you know that. There are lawyers here who are representing MTO, one from the Attorney General's office, and I suggest if you want to do the tit for tat that you do it with them. I will not do it with you.

Mr Kormos: No, no, sir, please.

Mr Dadamo: You won't get me caught in words. You know that.

Mr Kormos: I'm afraid we deal with words every day. The fact is, most of the people in the Legislative Assembly aren't lawyers; they're politicians, which may be no better and no worse, but the bottom line is that we have to understand what it is that people are voting on. I'm not talking legalese; I'm not here as a lawyer. I'm here as just a small politician from southern Ontario who wants to know what's being voted on. I think other members of the assembly would like that too.

I'm not trying to put you in an unfair position, because all of us have to form in our own minds, not as lawyers, what this means. I'm trying to determine for myself

whether it is expected that justices of the peace will interpret this particular section very much in favour of the rights of a defendant to engage in what lawyers call a full answer in defence.

Mr Dadamo: I don't know. I'm not a lawyer.

Mr Kormos: I only have one more section to query about. I'm not trying to be quarrelsome with you, Mr Dadamo. I like you.

Mr Dadamo: I like you too. I want you to spew your venom in the next couple of minutes and we can clear it up. That's what we're here for.

Mr Kormos: I've got no venom. I've got some questions. I'm curious.

Mr Burns: I believe the court would interpret it in view of all of the circumstances surrounding the defendant's request for that adjournment and the attendance of the witness, and it would also be interpreted in light of any jurisprudence applying under the charter with respect to the person's right to make a full defence and the presumption of innocence and all those other elements of the charter.

I would think we would have to await the courts' interpretation to see whether, in your words, they would interpret it liberally or not. I would think they would certainly give the defendant every opportunity to make their argument that they should have an adjournment because they require the officer there, after exploring the reasons why they didn't request the attendance at the earlier date. The fact that the person may have been misinformed or misunderstood probably would be interpreted in their favour and the justice would grant the adjournment in those circumstances. That really, on my part, would be speculation, but I certainly would think that if the court didn't interpret it in a reasonable fashion such as that, the person would clearly have a right to appeal.

Mr Kormos: One more query about one more little bit of phrasing, in section 205.13, where you talk about "through no fault of the defendant." Once again, when this was drafted, was it intended in choosing that language that that particular phrase, "through no fault of the defendant," would be interpreted very liberally, such that the defendant would have but a modest standard of proof in terms of satisfying that it was not through his or her fault that there was a non-attendance?

Mr Burns: I think the intent of the reopening provision, both in the photo-radar and also in part I dealing with the Provincial Offences Act was to allow for a more generous reopening of matters where the person did not receive the notice by mail.

Mr Kormos: I don't know whether Mr Dadamo wanted to say anything or not. He was nodding his head, I trust in agreement.

Those are the questions I had about the legislation. That's what I have to know. Thank you very much, Mr Dadamo, thank you very much, gentlemen, thank you, Chair, for—

Mr Dadamo: You're not leaving, are you?

Mr Kormos: I'm going to sit back and watch.

The Chair: Further questions, comments or amendments to subsection 1(1)?

Mrs Mathysen: To the witnesses, through Mr Dadamo, I appreciate Mr Kormos's humility very much. I find it most refreshing. But I wonder if perhaps someone could answer further, in connection to Mr Kormos's first question, whether it would not be to the ultimate advantage of a vehicle's owner to know that the person to whom he or she had given the vehicle in trust had been abusing that trust in driving at excessive speed.

Mr Brittan: Certainly from a police perspective that seems a very reasonable position to take. In fact, I think the assumption is that unless your vehicle is taken without your consent, you know where that vehicle is all the time. As a serving police officer for 28 years, I've never encountered a situation other than that it was either taken without consent or the registered plate holder knew where the vehicle was or had some sense of responsibility for who was using it.

Mrs Mathysen: So ultimately, if your vehicle is being abused, you may very well be saving your vehicle if you know that person is someone you should not be trusting.

Mr Brittan: We might very well be saving our children's lives, frankly.

Mr Daigeler: The point is not that we'd all like to know, if we give the car to somebody, what they do with the car. Of course we would. Normally, we give the car to somebody in good faith, as I do with my children, but once they have the car, fortunately or unfortunately, depending on the circumstances, they are masters of their own fortune.

I think this is what riles people so much. It was clearly stated by legal counsel, as we've been arguing from day one, that it is the owner of the car who is going to get the fine and who will have to pay at least 100 bucks, probably a lot more, who probably in no way, shape or form had any impact on how that person was speeding. I'm sure when he or she gave the car to the person driving, they did so under the assumption that they would follow the normal rules of the road and wouldn't put the owner in a situation where they would become liable.

I think that's the key concern out there. In fact, that is the key concern. I'm surprised Mr Kormos was asking the question, because in the letters I've received, I would say that was the big concern people had, that it is not the driver. If it were the driver who was going to get the ticket, some people out there said: "Okay, fine. He or she is a speeder and they ought to pay for it." But because it may well be just the owner who is going to have to pay, and as legal counsel said, that's the way it's going to be, that's the problem. That's what people are so concerned about.

That's my question now to the ministry officials, unless the parliamentary assistant wants to answer it himself. A lot of people feel this is unconstitutional. If they are the owners and not the drivers, they are not the ones who committed the offence. How can they receive a fine? They feel this would be unconstitutional, especially under our Charter of Rights.

I'd like to hear from the officials, through the parliamentary assistant, what the precedents are here. I understand this was raised in other jurisdictions as well. Have there been any cases? Have there been judges who have ruled on this matter? Have there been any appeals? What is the experience of other jurisdictions? Has the constitutionality of this measure been tested in the courts, and what has been the response of the legal level so far?

Mr Dadamo: Mr Daigeler, I would find it extremely difficult and hard to swallow that if your vehicle was on the road, whether you have one child or six, you would not know who was driving that vehicle; that if that photograph comes in the mail to you—and hopefully it comes within that one-week time frame or 10 days or whatever it happens to be; let's say one of your children was driving the car and it happens to be a Friday night—they would not be honest enough to come to you and say, "Dad, that was me driving the vehicle."

When I was 16 or 17 years old, I found it virtually impossible to have taken my father's vehicle without his knowledge. Why would that change from back then to 1993? As a parent, are you not responsible enough to know that the car's out and it's in the hands of one of your children, or a friend or a neighbour?

1720

Mr Daigeler: If I may be permitted, to the parliamentary assistant, that's not at all what I said. I at no point said not knowing who's driving the car would be a major problem. That's not at all what I said.

What I tried to say is that, as the owner, when I give the car to my child or to anybody else, I know I'm giving it to them. That was not my point at all, that I don't know who I'm giving it to or know who the person was who was driving it. I'm just saying that if I give it to another driver, I am assuming that he or she will drive and follow the rules of the road and that if he or she makes a mistake and speeds, he or she will be responsible for that and not me, as the owner. That's the concern, and that's the concern about the constitutionality. I would like some response to my question, which is still there.

Mr Burns: Perhaps I can respond to that. With respect to photo-radar, there have been prosecutions and a case that went to the Alberta Court of Appeal in which the vicarious responsibility of the owner for a speeding offence was upheld as constitutional.

Under the Highway Traffic Act, for many years we've had vicarious responsibility of owners for many offences not generally included in what we call driver offences or moving offences. However, the section has been upheld, section 207, as being constitutional.

While I don't think you can get a constitutional expert, and I'm not one of them, to state that there will never be a challenge, I think the jurisprudence to this point demonstrates that the owner can be held accountable for such offences, taking into account that the use of a highway and the operation of a motor vehicle is a privilege and not a right, that the interpretation of the laws applying to the operation of motor vehicles, which can present a lot of danger, can be regulated in a fashion which may not involve total freedom.

So there are some restrictions and some responsibilities placed on owners and drivers. It's my understanding, sir, that we have been successful in other jurisdictions in upholding it, and my understanding from the constitutional experts in Ontario is that we would certainly have a very good chance of withstanding any challenge in this area as well. That's not to say there won't be challenges—there are always challenges—but that doesn't mean we can't withstand those.

I think the opinion is that, based on existing jurisprudence and the manner in which the legislation is drawn, it would withstand those challenges.

Mr Daigeler: So I take it from your comments that I'm right that you have in fact asked your legal colleagues whether this matter would be constitutional, and they have assured you that it would be.

Mr Burns: Yes.

Mr Daigeler: My question was with regard to the case that you're raising—in Alberta, I think you said?

Mr Burns: Yes.

Mr Daigeler: Is that still under appeal, as far as you know?

Mr Burns: No. It was determined by the Alberta Court of Appeal, and it has not been taken further.

Mr Daigeler: I see. So it was in fact appealed. It was a lower court decision?

Mr Burns: Yes. It wasn't just a trial and a decision; it was a decision of the Alberta Court of Appeal, which is the highest court in Alberta, equivalent to the Ontario Court of Appeal.

Mr Daigeler: I see. Do you know when that was?

Mr Burns: I can get you the citation, but it was within the last three years; very recently.

Mr Daigeler: I see. I appreciate that part. Can I continue or come back?

The Chair: You have the floor.

Mr Daigeler: I'll pass it on to some other people, but I have several other points I wish to make with regard to section 1, as this is where I think we're at. I think especially the constitutionality of this whole measure is very important right from the beginning of this bill.

Frankly, I don't know whether this decision by the appeal court is available or whether it's very thick; frankly, I don't want a thick document, because I've got enough of those. But if the ministry, say, has in its compendium sort of a brief résumé of this decision, it probably would be helpful. It would be helpful for the public to know about this matter and be reassured in that regard, that in fact some people did raise this issue and at least a provincial supreme court has ruled that it was constitutional.

With regard to Mr Kormos's question earlier—no, he's still here—we obviously have no control or idea of how the courts will interpret, whether they're going to be liberal in their interpretation of this. I doubt very much whether they're going to read the Hansard of this session, and I don't think the public—

Mr Dadamo: They get them in law school.

Mr Daigeler: Are you saying they're getting them in law school? Good for them, then. I don't think we can be assured at this level that the people oughtn't to be too worried because the judges are going to interpret the provisions liberally and will let them go, if they can; I wouldn't take that into consideration at all. But I do accept the fact that was just mentioned, that there has been a challenge in the courts and an appeal court has ruled that vicarious responsibility is acceptable. Perhaps it would be useful as well to describe for us what these other instances are where, under the Highway Traffic Act, this vicarious responsibility comes into effect. That probably would also be useful for the members of the committee to know: What are these other instances? Are they of the same magnitude or of much bigger magnitude? I don't know.

The Chair: Thank you. I have Mr Morrow, Mr Turnbull, Mr White and Ms Mathysen on my list.

Mr Morrow: Thank you very much, Chair. I'm not sure where I'm directing this one, but I'm assuming I'm directing it at ministry staff.

We know the present-day Highway Traffic Act talks about points and we know that insurance companies can look at convictions to increase your insurance. Now you're taking the point system away, so what's going to stop insurance companies from raising their rates now based on the convictions?

Mr Burns: Perhaps I can assist on that. It is something that is dealing with the policy area, but I think during the period of the pilot, which this is initially, a pilot of six months, the records of convictions will not be used for purposes of insurance premium rate-setting. There will be an evaluation of the whole program and its effectiveness. At some date in the future there may be additional treatment programs developed with respect to offenders of this legislation, but the insurance companies will not be using the information certainly during the term of the pilot. I think there are consultations that will be held with the insurance industry regarding that.

That's more an area of policy, Mr Morrow, and as a legal adviser I may not be the best person to respond to you on that point.

Mr Brittan: I can confirm that that is our policy position.

Mr Morrow: What assurances can you give me that insurance companies won't increase their rates?

Interjection: They just did.

Mr Morrow: You are now giving me that assurance, then. Basically, why put the convictions on at all?

Mr Brittan: Obviously, part of our pilot project is to acquire some statistical information. When you're referring to convictions, are you referring to convictions as recorded by the Attorney General? They're a matter of public record.

Mr Morrow: But you're now taking away the point system, correct?

Mr Brittan: I think it's more correct to say that for purposes of the pilot program, the Ministry of Transportation is not proposing to assess demerit points for speed-

ing.

Mr Morrow: The other question I have would be a constitutional question. We all know that if somebody borrowed my car for four weeks and got, say, four speeding tickets, under the present system is it not correct that if I do not pay my speeding fines I cannot renew my driver's licence? Is that correct? Okay.

1730

The Chair: It would be helpful if we got a verbal response for the purposes of Hansard.

Mr Fox: I'm sorry. I thought the microphone would pick up my nod.

Mr Kormos: Well, I heard his nod.

Mr Morrow: I heard it too. The first part of my question is, if I do not pay my speeding tickets under the current system, can I or can I not renew my driver's licence?

Mr Fox: One of the methods for enforcing fines is driver's licence suspension. We have some amendments that deal with that incidentally in the bill.

Mr Morrow: So if I lend my car out to somebody and they get speeding tickets, because I'm responsible for it I can then not renew my driver's licence. Does that not create a constitutional problem?

Mr Fox: That's not correct. If you turn to page 19 of the bill, in the left-hand margin you'll see subsection (7), and the left-hand margin has the word "limitation." In a nutshell, what that means is a person who's convicted when photo-radar evidence is used cannot be imprisoned, cannot have his or her driver's licence suspended as a result of the conviction—that means as a punishment—or as a consequence of failing to pay a fine.

Mr Morrow: So we are now changing the system on that too?

Mr Fox: Only for an owner who's convicted of speeding by means of photo-radar evidence.

Mr Turnbull: Perhaps I could just ask the very simple question, why are there no demerit points awarded to a speeder?

Mr Burns: In the case of the owner offence, I think we will be dealing with persons who are not individuals, who are corporations, and in those circumstances we cannot apply demerit points. In following the advice we had from the constitutional experts, we could not apply demerit points to one set of individuals who are convicted of this offence who happen to be individual owners as opposed to persons who are corporate owners. Demerit points are only assigned under the current scheme to drivers and to individuals.

Mr Turnbull: I'm sure you're aware of the example of Sun City in Arizona, where they allow for a deposition to be made after the fact about who the driver of the vehicle was, and in those cases the owner of the vehicle has an opportunity to move the conviction or the charge over to the driver. I would ask you why would you not have the same mechanism here? That's part A. Part B is that under that system you then would be able to designate points to those people, because the owner of the vehicle, being a corporation, could designate who the

driver was.

Mr Brittan: I would like to give you the best answer I could. That would be that, as you know, this is a pilot project with four operating photo-radar machines. It takes a sophisticated operation to support photo-radar in what we refer to inside as the back end. That's the part where the film is processed and all of the technical connections are made with the various databases.

To implement a program such as you've just described, which they're using successfully there and in other jurisdictions, requires a significant clerical and administrative infrastructure. In Ontario, our position has been to acquire some experience with this technology to gradually bring ourselves up to speed as we understand the implications of photo-radar and how it operates in both its front-end mode—that's the portion that's out on the highway—and as we construct our back-end mode; that's the infrastructure that supports it.

We would trust that if and when we demonstrate a successful pilot, these kinds of considerations could be undertaken by the Ministry of Transportation in the appropriate time frame, and those kinds of changes might very well be practical as we gain some experience and develop an infrastructure to support it.

Mr Turnbull: Following along that line of thinking, would you comment on what the deterrent effect is of getting a notice in the mail some time after the fact.

Mr Brittan: I could only express an opinion on that as a citizen. I would have to expect that the deterrent effect would come from the fact that I have to pay a fine, and any time I have to make an expenditure, that presumably has a positive effect on my behaviour.

Mr Turnbull: Officer, I don't know if you've ever been in the circumstance that you have been pulled over for speeding.

Mr Brittan: I have.

Mr Turnbull: Maybe because of your training you don't have the same reaction, but I've only had three speeding tickets in my life, and I can tell you my heart was pounding like crazy as that policeman took that long walk. That taught me more of a lesson than receiving any ticket a week or two weeks or three or four weeks later in the mail and not knowing my state of mind. In that time the policeman takes to walk there, I think you do a lot of heart searching as to why you were speeding and why you were maybe concentrating on that next meeting you were going to. Would you not agree that is probably a more significant deterrent effect than this faceless thing that arrives a few weeks later?

Mr Brittan: I think you'll be reassured to know that the Ontario police community, and the OPP in particular, which is sponsoring the pilot, intends to continue to deliver highway traffic enforcement in exactly the same fashion it has been. Sir, if you are in the habit of exceeding the speed limit, you may yet face another heart-pumping experience when you are personally stopped, because we have no intention of abandoning our normal strategies of highway traffic enforcement.

Mr Turnbull: You may have heard in my opening remarks that I have suggested that if the ministry were

indeed interested in making this a safety measure as opposed to just a tax grab, all of the extra funds it generates through this could be quite easily dedicated to trying to top up the OPP, who I know are stretched to the limit and have less money now to spend than they've had in previous years, to a great extent because of this government. Would that not help with the safety efforts of the OPP, if you were to get extra funds?

Mr Brittan: You'll be pleased to know, as will the rest of the committee, that the government is in fact prepared to make a significant investment in the Ontario police community. I'd refer you to the fact—and I think I'm qualified to speak to this as the director of the government of Ontario's integrated safety project—that photo-radar is only one component of a significant integrated strategy which will benefit the Ontario police community as a whole.

Mr Turnbull: We've heard all of that, officer. What we're talking about is the extra funds that are generated from photo-radar being allocated as additional funds to the OPP. I don't want a rehash of the minister's announcements, because we've already heard those.

Mr Brittan: I understand your question. Of course, as we've never operated photo-radar in Ontario—and as a police officer, I'd like to assume that the people of Ontario will obey the speed limit—we have no idea what sort of revenues might accrue from this. That's a matter our pilot program will help us assess with much more certainty than we know today.

Mr Turnbull: The statistics of Alberta and BC have been quoted with great abandon. The statistics from Alberta seem to suggest that there will be at least a 50% increase in revenues. If we're going to quote statistics here from Alberta, let's get on the record what has happened in Alberta: Revenues went up by 50%. That's a major chunk of dough.

The RCMP officers in the BC test have expressed regret at the lack of face-to-face contact. Can you comment on that?

Mr Brittan: On face-to-face contact with the public?

Mr Turnbull: Yes, in a ticketing situation.

Mr Brittan: Perhaps they abandoned their traditional methods of highway traffic control in favour of photo-radar and gave up that aspect of police enforcement. We don't plan to do that here.

Mr Turnbull: Turning to the question of the ownership and the plates, which we were talking about before, there have been concerns expressed by leasing companies, as distinct from car rental companies, with respect to the ownership of the vehicle. The citation is going to the owner of the vehicle, right?

1740

Mr Burns: Perhaps I can answer that. The vehicle permit in Ontario is divided into two parts, the vehicle portion and the plate portion. In maybe the vast majority of instances, such as with myself, you own a vehicle and both the vehicle portion and the plate portion are in the same name, so you'll see your name on both sides. In the case of long-term leasing or the conventional leasing of vehicles, usually the vehicle portion is held by the lessor

and the plate portion is held by the lessee, and the lessee would be the owner for the purposes of photo-radar speeding.

Mr Turnbull: You said "usually."

Mr Burns: It doesn't have to be. If I lease a vehicle, I might insist that the lessor plate the vehicle in its name. However, certainly since we have the two-part permit since 1982, when we went to a plate-to-owner concept where you retain the plates when you sell your vehicle and those are your plates permanently, in the leasing situation, the practice—and I can't speak statistically but I think in the vast majority of cases, the long-term leases of vehicle equipment—is that the plate portion would be held by the lessee. He would renew the plates annually on his birthdate or her birthdate, and parking tickets and owner violations would go to the plate holder. The plate holder is deemed to be the owner for the purposes of this section.

Mr Turnbull: According to clause 205.14(c), "prescribing what constitutes evidence of ownership of a vehicle for purposes of this part," I believe leasing companies are the registered owners of their fleets, which involve thousands of vehicles, but they're not the plate holders. But you have already mentioned that not all circumstances are the same.

Mr Burns: Not all circumstances are the same.

Mr Turnbull: Then how will you handle that?

Mr Burns: I would think one of the distinctions would be in the rental car situation where it's a short-term rental, the rental company—

Mr Turnbull: I'm not talking about short-term rental; I'm talking about leasing.

Mr Burns: In that case, then that person would be the person to whom the plates are issued, and that could be the leasing company. I would submit it's analogous to the rental situation where you go in and take a vehicle for a weekend or a week and the rental company provides the plates; obviously, the plates probably are issued to the rental company. The ticket, if there is an offence, would be issued to the plate holder, which is the rental company, and then, as was discussed earlier, they would have to have recourse to the person who has rented the vehicle.

Mr Turnbull: You see, here's the point: having recourse to the person who rented the vehicle. That is patently untrue, because the rental companies cannot collect the money from the person who rented it. You just have to read the clippings today, and I have already discussed this with the car rental companies. They are most concerned that they are not able to collect this money by putting a charge through after the fact on a credit card. Perhaps the parliamentary assistant could respond.

Mr Dadamo: I want to go back to the comments I made this morning, that it's a pilot project. It really is. We can't lose sight of the fact that it's a six-month pilot project and an experiment. Obviously, we'll have to tally information, and I'm sure that's going to be a big chunk of it at the end of the project.

Mr Turnbull: With due respect, this legislation has

no sunset clause in it. This is permanent legislation. You're ramming this through without any public scrutiny, and the fact is it is fatally flawed, because the car rental companies cannot charge it back. You're saying, "Oh, well, this is just a pilot." I'm sorry, that doesn't hold water. This is permanent legislation. The fact that it's permanent legislation and that you have no clause in here to allow for a deposition to be made by the car rental owners about who was driving it on such-and-such a date indicates that there is a serious problem.

You have basically a choice. You can say: "Okay, I couldn't care less about that. Let the car rental company eat it." Well, the practical application of that is that either they absorb it or increase rental. I can tell you most car rental companies are now charging typically less than they were charging six or seven years ago. Their costs have gone up, automobiles have continued to increase in price, insurance, all of the things that are associated with the industry have increased in price, but their rental rates have actually declined.

We depend on a healthy car rental business to be able to support tourism. Tourism is one of the major businesses of Ontario. If you allow this to go through unchanged, you will either drive companies out of business or you will see an increase in rental rates because they have no capacity to be able to absorb this. If you drive them out of business, then all you do is you cause a monopoly of a few companies, which is not healthy. If they start distributing it across all of their fleet, it has an impact on the attractiveness of Ontario as compared with other administrations around the world.

Already, as I'm sure you're well aware, rental rates for cars in Ontario are high compared with most US locations; I think all US locations. There are implications for the Ontario economy in this. I don't like photo-radar. You know that; that's on record. But I'm saying, as a matter of practicality—you're going to get this through; we know you have the votes—surely it would be reasonable to contemplate that you would be able to have an amendment in this legislation that would allow for the deposition to be made by the car-owning companies, and then the ticket would be charged to those people. It would be the responsibility and at the cost of the Ontario government to collect it from those people, not the car rental companies. Could you perhaps respond to that? This is a very real concern.

Mr Dadamo: It is, with the utmost respect for you, Mr Turnbull. Obviously we don't have all the answers at this point, but I would think that most car rental companies take deposits up front, do they not?

Mr Turnbull: If you've turned the car back, that's of little use to you.

Mr Dadamo: But I'm sure they'll have some sort of—I use the word "scheme," but I mean it in a sense that they'll have worked something out to protect themselves. I'd like for legal counsel to shed some light on it.

Mr Turnbull: The reality is, today they have difficulty collecting the majority of the parking tickets. That's what's happening today. I see the OPP officer nodding and saying he doesn't think that's true. Is that correct?

Mr Brittan: The impression I have is that the auto rental industry has some significant success in recovering parking fines.

Mr Turnbull: Gee, it's strange. I went and attended one of the meetings where they had people from most of the large companies and many small companies, and this was one of their most significant concerns.

Mr Brittan: Well, perhaps they have some motive for putting it to you in that fashion.

Mr Turnbull: I would suggest that perhaps you have a motive for putting it to me in the fashion you did. The fact is that—

Mr White: On a point of order, Mr Chair: We have a witness in front of us who deserves to be addressed with some respect, and I don't think it appropriate for the member to be imputing motive to that witness.

Mr Turnbull: I just want to examine what I said. I simply reflected what the officer had said: He suggested they had some motive and I turned it around on him. You seem to take umbrage at it.

The Chair: Through the Chair, Mr Turnbull.

Mr Turnbull: Mr Chair, I believe this is the flaw in this process, that we don't have an opportunity to bring these people before us and take their positions. The OPP officer is making the claim that he doesn't think it's true. Maybe he's right, but how will we ever know? I have been told differently by those car rental and leasing companies. I haven't made it up, because I don't know; I have just consulted with people who are concerned about this legislation. It goes to the very heart of what I have said from the very beginning, that as long as you cut off any public scrutiny, you will never know. I guess there's the old saying that ignorance is bliss.

1750

Mr Brittan: I'm not a lawyer, but I am an occasional renter of a motor vehicle in Ontario. I have taken the time to read the fine print, which is almost legible on the rear of the standard auto rental contract which every company in this province uses. As the person who rents the vehicle, I clearly understand that I am responsible for everything I do with that motor vehicle, including parking tickets. There's no question in my mind about that as a renter.

Mr Turnbull: Let me just quote from today's paper, the Toronto Star of November 25. I speak about the "innocent owner" amendment they're calling for.

"Kenmir"—who's the head of their association—"said most rental contracts call for customers to sign an agreement stating they're responsible for all tickets received while they have the vehicle, but most lessees never pay fines. Only Scotiabank lets car rental firms charge tickets to customers' Visa credit cards."

Mr Brittan: If Scotiabank finds it reasonable that parking tickets and other charges, subsequent to the termination of the contract, should be later charged to a Scotiabank credit card, as a consumer of credit from a variety of banks, it seems only reasonable that others would do the same.

Mr Turnbull: Well, they don't.

The Chair: I just remind members that I have six members on the list and 10 minutes to go today.

Mr Turnbull: Let me ask to the officer, what are the expectations of this pilot project?

Mr Brittan: The question has been asked what the expectations of our pilot are. From an OPP traffic management perspective, we're optimistic that we can at least demonstrate that there is a positive behavioural change in motor vehicle drivers in areas in which we're proposing to utilize our four photo-radar machines.

We're reasonably confident that that should be the case, because we have looked statistically at every other photo-radar program in the world, and we cannot find a single instance where there was not a positive change in driver behaviour and reduction in collision, injuries and deaths.

Mr Turnbull: Are you aware of some of the things that are going on in Europe, where when a flash goes off at night people smash the box to pieces?

Mr Brittan: I take it you're referring to a white light?

Mr Turnbull: Yes.

Mr Brittan: Technology is rapidly changing and there's no need necessarily for a white light any more. It can be done with infrared photography.

Mr Turnbull: The fact that somebody can hide it doesn't make it any less obnoxious than the people in Europe are finding it, quite frankly.

Mr Brittan: Perhaps I could clarify. It is not our intention to leave these cameras unstaffed in boxes adjacent to the roadside or, as I understand has been mentioned, hanging from trees. It is our intention to operate these in motor vehicles, fully staffed, and for the purposes of the pilot program the OPP intends to use sworn police officers to operate.

Mr Turnbull: Why, then, are we not stopping the people at the time; using the photo evidence after the fact but actually stopping them? In that way you can stop people who are drunk and charge, you can obtain information about whether their driver's licence is valid. If you're having manned vehicles, why are you doing this?

Mr Brittan: At the present time the standard methods of hand-held and moving radar frequently require the presence of more than one police officer: the one who operates the machinery, and then subsequently down the road—an eighth of a mile, a quarter of mile—are one or two or three more police cars with police officers busy on the side of the road trying to pull over vehicles. Photo-radar has an efficiency about it in that it frees up other officers to do other things that are important to the community.

Mr Turnbull: What percentage of the radar traps existent in the province have a separate unit monitoring them and then other cars picking the people up; a percentage of those operating in the province?

Mr Brittan: I would say that's a statistic that the OPP doesn't keep, but a significant number of traditional radar enforcement setups require more than one person.

Mr Turnbull: Give us just a guess of what that would be.

Mr Brittan: In the greater Metropolitan Toronto area, almost without exception there are multiple officers involved.

Mr Turnbull: Multiple officers, but what about multiple cars?

Mr Brittan: That's correct, because it is not practical for a stationary police vehicle parked on the shoulder of the road operating radar to suddenly pull out into moving lanes of fast traffic and pursue a vehicle. The only workable strategy is to have another police vehicle farther down the road and a physical stop has to be made. This necessitates the men and women of the OPP and other police services stepping out of their police car, stepping on to the roadway, trying to differentiate between vehicles while they're listening to their radio, trying to get the attention of the driver, trying to get the driver in the inside or the middle or the outside lane to recognize that they've seen the officer wave, trying to get that car to cross back and come safely to the shoulder, and if the vehicle doesn't come safely to the shoulder, accepting the consequences of whatever that might be, or having to get back into their police car and pursue that vehicle.

Mr Turnbull: Officer, I want to take pains to suggest that I know it's a very dangerous procedure and I have great respect for the police officers. Don't take anything I say in questioning as in any way impugning what the police do. You will find no party more supportive of the police than the Progressive Conservatives.

You spoke about the question of differentiating between vehicles. Am I not correct in thinking that there is a technical problem with differentiating between vehicles on photo-radar, that there are circumstances when you can have two cars side by side, one of them travelling at a significantly different speed from the other, and the slower car can actually be ticketed?

Mr Brittan: I'm pleased to be able to reassure you that the manufacturers of photo-radar equipment that we're presently looking at provide computerized safety assurances that if the photo-radar device is uncertain about which vehicle is speeding within its frame of reference, it does not take a photograph.

Mr Turnbull: Specifically what equipment are you looking at? We haven't got that information from the police.

Mr Brittan: At the present time, we have a request for proposal or a tender call which is receiving worldwide attention for the supply, delivery and installation of photo-radar equipment. We would expect to receive

responses to our tender call from virtually every manufacturer of photo-radar equipment in the world.

Mr Turnbull: The BC experiment resulted in some real misfiring in terms of the equipment. They ruled out certain pieces of equipment from the very beginning.

Mr Brittan: Again, technology continues to change and continues to improve. I personally have sat and received presentations from several manufacturers of photo-radar equipment. While I would have to accept their word at this point in time, I have been clearly told that if the photo-radar device is uncertain about which vehicle within its frame of reference is speeding, it does not take a photograph.

Mr Turnbull: Are they prepared to offset the cost of any challenges if it's found to be malfunctioning or taking shots of vehicles that are actually at different speeds?

Mr Brittan: I should also tell you that virtually all of the state-of-the-art photo-radar equipment is self-testing and continues to test itself all the time. If it fails, it does not take a photograph.

The Chair: We have about a minute. Mr White, I believe.

Mr White: Mr Chair, I respect your ruling, certainly, that we have a minute. However, I have a large number of questions that I haven't had the opportunity to pose. I'm wondering if I could continue at our next meeting.

The Chair: I'm certain that on Thursday morning next the debate on subsection 1(1) of this bill will continue, Mr White, and you will probably have opportunities presented to you.

Mr White: Will I still have the floor, Mr Chair?

The Chair: Yes, I will instruct the clerk to keep my list, Mr White.

Mr White: And my name would be at the top of that list, Mr Chair?

The Chair: It would be, Mr White.

Mr White: I have a number of questions and I'd like to start with just a couple of them. First of all—

The Chair: Your minute's up. We've exhausted the time that was permitted. We have a number of people on the list, and your name is on the list, Mr Johnson.

I'd like to thank the parliamentary assistant and his assistants for appearing today. I'm sure the committee will continue dealing with this bill next Thursday morning.

The committee adjourned at 1801.

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*Morrow, Mark (Wentworth East/-Est ND)

Sorbara, Gregory S. (York Centre L)

*Wessinger, Paul (Simcoe Centre ND)

*White, Drummond (Durham Centre ND)

**In attendance / présents*

Substitutions present/ Membres remplaçants présents:

Offer, Steven (Mississauga North/-Nord L) for Mr Sorbara

Mathysen, Irene (Middlesex ND) for Mr Mammoliti

Turnbull, David (York Mills PC) for Mr Arnott

Also taking part / Autres participants et participantes:

Brittan, Colin, director, integrated safety project, Ministry of the Solicitor General and Correctional Services

Burns, Ross, legal counsel, Ministry of Transportation

Fox, Larry, legal counsel, policy development division, Ministry of the Attorney General

Kormos, Peter (Welland-Thorold ND)

Tilson, David (Dufferin-Peel PC)

Clerk / Greffier: Carrozza, Franco

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Yurkow, Russell, legislative counsel

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Troisième session, 35^e législature

Official Report of Debates (Hansard)

Thursday 2 December 1993

Journal des débats (Hansard)

Jeudi 2 décembre 1993

Standing committee on
general government

Comité permanent des
affaires gouvernementales

Provincial Offences
Statute Law Amendment Act

Loi de 1993 modifiant des lois
en ce qui concerne
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LEGISLATIVE ASSEMBLY OF ONTARIO

G-631

STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday 2 December 1993

The committee met at 1013 in room 151.

PROVINCIAL OFFENCES STATUTE LAW AMENDMENT ACT, 1993

LOI DE 1993 MODIFIANT DES LOIS EN CE QUI CONCERNE LES INFRACTIONS PROVINCIALES

Consideration of Bill 47, An Act to amend certain Acts in respect of the Administration of Justice / Projet de loi 47, Loi modifiant certaines lois en ce qui concerne l'administration de la justice.

The Acting Chair (Mr Ron Eddy): Good morning, members, ladies and gentlemen. The standing committee on general government in clause-by-clause of An Act to amend certain Acts in respect of the Administration of Justice is now in session. I've been advised that Mr White was to be the next speaker. Is that correct?

Mr Drummond White (Durham Centre): Thank you very much, Mr Chair. Frankly, this legislation has caused a great deal of concern throughout the province, throughout my community, and I represent a community where we make automobiles. We make automobiles that have the capacity to go at quite creditable speeds. For example, the Buick Regal, which I drive, is a very good car that, with a 3.8-litre engine, has the capacity of exceeding 100 kilometres an hour.

As to the issue about constitutionality, I understand that issue has been decided in the courts by the Alberta Court of Appeal and that a lot of the concerns and the fears that people have are really quite bogus. None the less, I think they're worth exploring and worth dealing with in public debate, not from a stance of fearmongering, of inciting all kinds of dissent, but rather from a standpoint of having an open dialogue about the real issues in front of us.

I think the constitutionality speaks to whether or not people in our community feel that speeding is in fact a dangerous behaviour. Frankly, I think many don't. I hear from my own colleagues about their membership in the "frequent flyer" club and things like that. It's not thought to be an issue of safety across the board. In the same way that drunk driving perhaps 20 years ago wasn't thought to be a significant issue, I think speeding is still not considered to be a real issue.

There are a number of issues I wanted to explore along these lines. First of all, they are important issues. They are important issues for us as lawmakers, because without the respect that the law should have, we will have people breaking the law and feeling as if it doesn't matter, as if it's something that's imposed upon them. I think people need to know that there's a reason to respect that law, and that's why I wanted to explore several issues.

First off, I read in my notes the importance of safety in this legislation. There's a clipping here from Alberta where the police department in Alberta feels that the incidence of fatal accidents has decreased dramatically

because of the introduction of photo-radar. I don't know if that is the case across the board, but to start off, my questions have to do with the whole issue of safety.

I see that in one out of six accidents, speed is involved. When I think of the highways in my neck of the woods, even though poorly serviced and usually jam-packed, because we're in Durham region, which hasn't always had the level of good representation we do now—those roads still aren't widened to adequately accommodate the drivers in our area, but even so, I wouldn't be surprised if significantly more than one in six drivers on our roads is speeding.

So when I see a statistic that says one in six accidents involves speeding, I would think: "Gee, it sounds like speeding is a safe incident. After all, if you have one in two drivers speeding and accidents are only involved with one in six"—I wonder if we could explore that a little bit, the relationship between speeding and accidents; first off, accidents period, and then of course the severity of the accidents, the fatal accidents.

Mr George Dadamo (Windsor-Sandwich): I'd like each person who speaks to introduce themselves, as we did last week, so anyone who speaks will be identified.

Mr John Hughes: I'm John Hughes. I'm the director of the safety policy branch of the Ministry of Transportation.

I could address the question of speed as a safety factor and the public perception of speed as a safety factor. There are three points I'd like to make in response.

First of all, there is a very direct and proven correlation between average speed and fatalities and injuries and collisions. There are a number of studies and examples, but I think the best example is the American experience over the last 10 to 15 to 20 years, where there've been several instances where states originally dropped their speed limits due to the energy crisis. When that went away, they rebounded and raised their speed limits, and many of them now are dropping them again. The reason for this is that it's easy to show a very direct correlation between posted speed and fatality and injury rates on those roads.

The second point is that in the Ontario experience, from our collision data records, we know that speed is the greatest single contributing causal factor in collisions.

Third is just the point that the higher the speed, the more severe the consequences of any collision.

1020

Those are three pretty important points to make when considering whether speed is a safety factor. I believe it is. I think public perception may be something different.

Mr White: Could I go back to that? You're saying speed is the greatest causal factor in an accident. Obviously, though, when the accident is investigated, it tends to be after the fact and both vehicles are stopped at that

point. How does one know that anyone was exceeding the speed limit?

Mr Hughes: The collision report filled out at the site by the police officer has spaces and opportunities for the officer at the site. Based on his questioning and observations at the site, he has the ability to fill in parts of that form which indicate, in his opinion, what causal factors are involved in the accident. In more serious collisions, of course, it's based on a much more intensive investigation than that.

Mr Colin Brittan: Mr Chair, perhaps I could amplify that. I'm Superintendent Colin Brittan, director of the government of Ontario's integrated safety project. As a serving police officer for more than 25 years, having spent 13 years in service as a constable in southwestern Ontario and having personally investigated several hundred collisions, many of which, far too many of which, were fatalities—single fatalities, sometimes double fatalities, sometimes multiple fatalities with as many as five or more people, oftentimes children, teenagers, young drivers—I might be qualified to attest to how we make determinations with respect to speed.

Mr White: Very much so.

Mr Brittan: It doesn't take a police officer long to recognize, first of all, that speed is frequently an obvious contributing factor to a collision even though it may not be the primary reason that the collision occurred. I'm thinking, as an example, of a multiple fatality I investigated personally in which five young teenagers were killed. There was a mechanical failure in their motor vehicle, but they were travelling 40 or 50 miles an hour over the speed limit. While I can't remember precisely how I filled in the Ministry of Transportation motor vehicle accident report, I'm sure I reported that the collision was caused by a mechanical failure and that speed was a contributing factor.

But without exception, the faster you go, the harder you crash. I've used that phrase, which, frankly, is stolen from the state of Victoria in Australia, where that has become a very powerful phrase to help drivers of all ages recognize the simple law of physics: The faster you go, the harder you crash. Whether we have collisions at 50 kilometres an hour or 80 kilometres an hour or 100 kilometres an hour or faster, the risk of dying is significant. The faster you go, the more risk of significant personal injury or death increases.

In the case of the OPP, which investigates a large number of fatalities on roads all over Ontario, including our best highways and including townships and roads in unorganized territories, some of which are of lesser quality than the highways we're accustomed to here in the greater Metropolitan Toronto area, it's always a disappointment to encounter a fatality where speed was a principal factor. A police officer can recognize the symptoms of excessive speed by the damage to the vehicle and, I must tell you, also by the damage to the victims.

It's interesting to note that in recent years, with the improving quality in motor vehicles and air bags and seatbelts and radial tires, we still have a fatality rate in Ontario of about 1,100 people a year. One of the things

that concerns the Ontario police community is the possibility that drivers are feeling more confident about their ability to withstand a collision at higher speeds because their motor vehicles, if we are to believe the advertising we see, are said to be safer. As a group, we're concerned that this is lulling motorists into the perception that they can drive faster than posted speed limits and have a greater likelihood of surviving a collision. As an investigator, I'm told by police constables working in the field today that this is a very serious concern. Therefore, I think it's quite appropriate that we look for modern, efficient tools to help regulate the speed of drivers on Ontario's highways.

I'd just close by saying that in Australia they're using another phrase: "Don't fool yourself: Speed kills." A gentleman was kind enough to send this to me as an example of some of the tools they're using to help educate the public. Perhaps it's necessary here in Ontario to adopt some fairly straightforward and blunt safety messages with respect to speed and the probability of injury or death. Perhaps that will be something we'll deal with as we introduce photo-radar in the months to come. I hope that's been helpful.

Mr White: Very helpful, Superintendent Brittan. I very much appreciate your experience in this issue. What you're saying is that while it's impossible to know, on a case-by-case basis from a driver's perspective, what caused an accident, the report of police officers who have been at the scene of countless thousands of accidents is not impressionistic but based upon that knowledge over time, of seeing many thousands of accidents and probably, for each individual, hundreds of injuries and fatalities.

Mr Brittan: As was mentioned just a moment ago, of course witnesses are interviewed, if we're fortunate enough to find survivors in some of these collisions. Again speaking from personal experience, it's sometimes a shocking event, even for a police officer who's spent years in the field, to have a survivor in a vehicle and to discover that the survivor was sitting in the back seat between two or three other young adults or teenagers, literally trapped in a vehicle, with a driver over whom they have no control and to survive a collision in which their friends were grievously injured or killed and to have been able to do nothing to prevent it.

I've suffered through that experience and I can tell you it's a very emotional thing, not only for the survivor but for the family and for the family of the others. That sort of thing also happens too often. But oftentimes witnesses will report accurately, and there are other evidences that can be used to determine speed.

Mr White: That leads to another question I had. Again, Superintendent Brittan, you might be the person best suited to respond. Police officers have been involved, on numerous occasions, in seeing the results of those accidents. There is also, no doubt, a lot of reasoning every time they stop a speeder. They have seen those accidents, they have seen those fatalities and they've seen the tragedy of young lives being snuffed out so grievously, so prematurely. I'm sure that's one of the reasons they are ardent in their pursuit of speeders.

The issue was brought up when we last met, by one of my colleagues in the opposition, that his heart thumps when a police officer stops him for speeding or whatever. Going back to this issue of respect, I also have a respect for the police officers. I'm not sure I'm in peril for my personal safety, but certainly when one sees a police officer, one feels a little sense of respect.

How do police officers feel about those incidents when they pull someone over, when they get out of their car and approach that vehicle in front of them? This is a tremendous change, or could be, in the working conditions of many police officers who constantly monitor speed and safety on the roads.

1030

Mr Brittan: Again speaking from personal experience, I can tell you that to stop a speeder in the middle of the afternoon has its own unique set of threats and benefits to the public. A police officer never knows what he's going to discover as he approaches a violator's car, even a violator as simple as a speeder. It's quite another thing to do this at night. Your question brings to mind the recent—well, not to get specific, I think you would all know we have lost some police officers in Ontario in recent years who were doing nothing but stopping speeders at the side of the road, sometimes at night, sometimes in the daytime.

This is not an exciting task. This is not a personally pleasing task. It's satisfying in the sense that eventually you have some feeling that you might be influencing the behaviour of drivers, you have some feeling that you might be able to somehow discourage speeders, but it's very hard to see evidence of that.

Perhaps I could give you an explanation of why that would be. Looking at OPP statistics on the issuance of provincial offences notices in the last five years—and I can't be precisely quoted here but I know I'm very close—five years ago OPP field officers issued over 500,000 provincial offences notices. Last year they issued just over 300,000, a very significant decline. By far the majority of those are speeding charges and always have been. It is the single most common provincial offence violation and, as far as I know, has been for ever.

In trying to determine why there would be such a radical reduction in the issuance of provincial offences notices, which, by the way, I'm told is reflected in the other police services in Ontario too, I'm told reliably that the reason for this is that during the past five years there has been a corresponding increase in reported crime. Reported crime has climbed, if I'm not mistaken, in the last five years something on the order of 40%. Police officers find themselves torn between their sworn task of influencing the behaviour of drivers—because we know that's a very important thing and that each and every year we lose about 1,100 drivers in Ontario and we have about 90,000 people injured—torn between dealing with that issue and the ever-increasing reported crime.

In the case of the senior management of the OPP, judging by the newspapers, we see senior police managers and other police services recognizing that there is not a never-ending source of revenue to continue to hire more police officers. The reality here in Ontario and

certainly within the OPP is that resources have been diverted, through the pressure of increasing crime, away from traffic. This, I would predict, will continue to occur, because the OPP, like other Ontario police services, is pressed to satisfy its constituents that crime must be addressed and resolved. After all, that's uppermost on our citizens' minds, and in terms of our community policing advisory groups, which the OPP has all over Ontario, we are receiving advice that we should be pursuing the criminal aspects of daily life, and if anything has to suffer, it's traffic that has to suffer.

From a police managerial perspective, this is very disappointing, but the evidence is clear. Unless we can find some other means to influence driver behaviour in a positive way, it's quite clear to me that the incidence of the heart-pounding stop at the side of the road that was referred to at our last meeting will be less and less and less. That's most unfortunate.

Mr White: But when you mentioned that heart—

The Acting Chair: Mr White, we do have five other members who wish to speak, so could you hurry a bit?

Mr White: Well, I am, Mr Chair.

The Acting Chair: I don't agree; there has been some repetition. We have five other speakers on my list.

Interjection: Hurry it up.

Mr White: I am, Mr Chair. I think these are important issues, though.

The Acting Chair: Very important issues, yes; I agree.

Mr White: My constituents are wanting to know and to explore some of these issues, and I'm concerned that you're pressing us on. Certainly my colleagues don't want to take a great deal of time on this issue. It's important to have these safety issues explored, though.

The Acting Chair: I see.

Mr White: Further to that, though, when we talk about the heart-pounding issue, as you elaborate, it is in fact the police officers who have as much reason to have their hearts pounding as the motorist. In fact, they're probably in much greater danger, to put it mildly, in those incidents.

Mr Brittan: That's correct, sir. Just getting out of their cruisers and stepping on to the roadway or on to the shoulder can be a very exciting, heart-pounding experience, I can assure you.

Mr White: Would legislation like this and tools like this, which have been proven to be effective in other jurisdictions, be seen to be welcome by the constabulary across the province for those reasons?

Mr Brittan: I think there are, as we find in the general population, some misunderstandings about photo-radar and how it might work and what it will do. But generally speaking, I think we will find a very positive reaction. Certainly those police officers within the OPP—and I've been working with the Ontario Association of Chiefs of Police—receive the concept of photo-radar and the ingredients of Bill 47 in a very positive way.

Mr White: You're indicating as well that a lot of attention has been diverted from traffic safety in the last

while. With technology like this, would the efficiency of this kind of technology then allow for the maintenance of that kind of division of labour, so that police officers, after the introduction of photo-radar when it has been tried out, could spend more time fighting crime, taking a fair bit of the time they would otherwise be spending at the roadside pulling over vehicles?

Mr Brittan: While we don't have any personal experience here in the province of Ontario yet with photo-radar, and of course that's part of the purpose of our pilot, if I could refer you to a recent article on November 29 in the Ottawa Citizen with reference to the Calgary experience—I believe that was mentioned at our last meeting—it's reported that the Calgary police service reports that it increases the efficiency of a single officer up to 200 times.

Mr White: Two hundred? That's substantive.

Mr Brittan: If we could have that sort of gain here in this province, that should have a remarkable effect on our allocation of police resources.

Mr White: I'm wondering as well, as I see in my colleague's notes—

The Acting Chair: Mr White. We'll move to Mr Daigeler.

Mr Hans Daigeler (Nepean): With all due respect to Mr White, we didn't really establish a formal process, but—

The Acting Chair: I understand that you have not.

Mr Daigeler: —I think we should give everybody else an opportunity to ask some questions because we have only until 12 o'clock. I know the questions are important, but I think everybody else has some important questions as well.

Mr White: Mr Daigeler, I don't recall you—

The Acting Chair: Please, Mr White, would you address the Chair? This is not a conversation; it's a committee meeting.

Mr White: Thank you, Mr Chair. Through the Chair to your colleague, Mr Chair, I recall that the last time we had extensive debate and speechmaking. We spent the better part of the afternoon—the full day, in fact—avoiding these important issues.

I, sir, am only attempting to explore what my constituents consider to be important issues, understanding what this legislation is about, understanding the safety implications of this. Certainly I don't recall there being objections by any of the opposition members to that speechmaking, nor did the government members.

1040

Mr Bernard Grandmaître (Ottawa East): But you voted to support time allocation.

Interjections.

The Acting Chair: Members of the committee, please. Mr White, would you proceed? You have a few moments.

Mr White: Thank you very much, Mr Chair.

Mr David Turnbull (York Mills): On a point of order, Mr Chair: I would just put on record at this point

that the subcommittee unanimously agreed that there wasn't sufficient time to study this—

Mr White: That's already been on record.

Mr Turnbull: —and in fact it was the government's motion that cut off the time. You can't have it both ways.

Mr White: I'm attempting to explore important issues, not get involved in partisan debate here.

The Acting Chair: Ms Mathysen, did you wish to speak?

Mrs Irene Mathysen (Middlesex): I believe we should establish some time lines, because as I recall, last week Mr Turnbull had almost the entire afternoon. Very clearly, it's important that one member of the committee not be given inordinate amounts of time today, as happened last week. That was most unfortunate, and I think we should come to some kind of agreement regarding this.

The Acting Chair: Mr Fletcher, on the same point?

Mr Derek Fletcher (Guelph): I agree with my colleague. I think perhaps 10 minutes per caucus, and rotate around each 10 minutes.

Interjection: Twenty.

Mr Fletcher: Or 20 minutes; whatever.

The Acting Chair: Twenty minutes?

Mr Fletcher: Consensus is fine with me. In all fairness, I think everyone should have some time.

The Acting Chair: Do the members agree to that allocation at this time? Everyone? Proceed, Mr White.

Mr White: Fine, thank you. I'll wrap up quickly then, because we have an agreement of 20 minutes per caucus.

Mr Fletcher: You have five minutes left.

Mr Grandmaître: Thank you, Mr Chair.

Mr White: Thank you very much, Mr Chair. The issue I want to bring up from my friend Mr Dadamo's notes on an earlier presentation is that the police will decide, "based upon a range of factors such as weather, road conditions and traffic volume," at what speed the photo-radar would click in or the tickets would be issued at. In terms of that issue, at the first bad weather of the year, I'm always amazed at the number of people who go zipping along the 401, or whatever major artery, at excessive speeds, and by "excessive speeds" I mean the speed limit, because these are not times when it's safe to do so. When everyone else is, even along the 401, proceeding at 40 kilometres an hour or so, some people go zipping by, with bald tires. These are the things that strike me as being of real concern. How would we see these factors being weighted in, as Mr Dadamo indicates, this very important road safety issue?

Mr Brittan: No enforcement tool or police officer can charge a person with a speeding offence if they're not speeding, regardless of the weather, but there are other sections of the Highway Traffic Act that can be used to address persons who, while certainly within the speed limit, are ignoring the obvious hazards associated with weather. I think that's the point you're referring to.

Mr White: Yes.

Mr Brittan: Typically, when people find themselves

in winter collisions or collisions as a result of icy road conditions and the investigating officer is of the opinion that the driver certainly should have known they were going faster than they should be for road conditions, but less than the speed limit or not speeding, there is another charge that's very frequently used, and that's careless driving. Certainly—I can speak from personal experience—that's a very appropriate charge. The penalty, mind you, is significantly greater, typically, than the penalty for speeding, but it's a very effective section in the Highway Traffic Act which covers that scenario.

Mr White: Is it often used for those situations that Mr Dadamo described?

Mr Brittan: It's frequently used.

Mr White: One final question in terms of the public relations issue: Obviously, as I've indicated at the outset and as we know from the public discourse on this legislation, there is an important, very valuable need for public relations with regard to speed. Superintendent Brittan, your bumper stickers and slogans I think are an important part of that. Is the OPP, is the Solicitor General's ministry, proceeding with some form of public relations program so people are aware of the tremendous danger speed poses and the value of regulatory legislation like this?

Mr Brittan: That's a very good question. In partnership, the Ministry of the Solicitor General and corrections, the Ministry of Transportation and the Attorney General are presently engaged in designing a significant program to help educate the drivers in Ontario with respect to not just photo-radar, I should say, but with respect to the graduated driver's licence program, the RIDE program, the need to keep people reminded about wearing their seatbelts, and photo-radar. We have staff and we are funded and we are developing this program, which we plan to present to the people of Ontario early next year.

Mr White: Thank you very much, superintendent.

The Acting Chair: Thank you. Mr Johnson.

Mr David Johnson (Don Mills): To the superintendent, probably; you seem to be bearing the brunt of this. Are you aware of whether the Metropolitan Toronto Police Association took a vote on this issue?

Mr Brittan: No, sir, I have no knowledge of that.

Mr David Johnson: No knowledge? Okay. I've of course been approached by a number of people on this topic of photo-radar. The problem, I can tell you, is that not one of them who has approached me has been in support.

It was interesting. A couple of weeks ago, a class came in, and we get our photograph taken with the class. On that particular day, photo-radar was being debated in the House, and I happened to mention that and talked to the kids about it. I could see, out of the corner of my eye, the teacher's face going very sour. I turned my attention to her and she, with hardly any prompting at all, laid out her thoughts. She thought this was very pervasive and Orwellian and she hoped it wouldn't go through. I found that very interesting, and it was totally unprompted.

That's the kind of reaction I'm getting from people

who come up to me and tell me about it. I think a lot of the problem will boil down to, in the end, what sort of speeds you intend to enforce that at. You've indicated that it depends on the various road conditions, that sort of thing, but perhaps you can give us a more specific indication, because people are going to want to know this.

Let's take Highway 400 going north, perhaps on a Friday night, a clear night, no rain, people going to the cottage, that sort of thing. Right now there's the general impression that if you're under 120 you're okay. I don't know if that's true or not, but that certainly is the impression that's out there. Would the photo-radar enforce at below 120?

Mr Brittan: I'd like first to refer to the issue about the comments of the general public, because I too am receiving unsolicited telephone calls from all over Ontario. Frankly, I'm learning that people are not that well-informed with respect to how photo-radar is proposed to work in Ontario. I discover that the people I'm talking to, once they realize how photo-radar is going to work and once they're properly informed, are saying: "Sounds fine to me. I have no problem with that."

Yesterday, as a new experience for me in my lifetime, I appeared on a live radio program with an audience which, frankly, was very chilly at the outset. Before we finished, I think they were beginning to realize that the concept of photo-radar, which is being characterized as Orwellian and other phrases that have been attached to this in the Ontario media—I think it's because people, the media included, don't necessarily understand how photo-radar will be operated.

In answering your next question, I think we can begin to set people's minds at ease. I should also say that there are certain kinds of people, if I dare classify people at all, but typically we might expect to find them among our younger drivers, who will never be satisfied that photo-radar is a useful tool, no matter what we say. We might remember, when we were younger, how we felt about motorcycle helmets and how this impinged on our individual rights and freedoms to kill ourselves in any way we wished. We might remember, when we were younger, how upset we were about the fact that we had to wear seatbelts—we couldn't imagine that seatbelts could possibly save our lives—and how offended we were that the government would impose a law on us that would actually tell us what we had to do in the privacy of our own cars. So I do believe sincerely that there will be people who will never see merit in photo-radar. Be that as it may, we'll live with that.

1050

Mr David Johnson: I wonder if you could address my question. Time is evaporating.

Mr Brittan: I will. I think that Mr Dadamo, in his statement last week, indicated two key things.

One is that police officers always had and always will have discretion in establishing how the tools they are provided by the government will be used. By "discretion," I mean that police officers or people who are sworn as provincial offences officers who operate photo-radar will make decisions on the scene, taking into

account the weather conditions, taking into account the volumes of traffic, taking into account a number of factors, having received advice from the Ministry of Transportation with respect to the accident rates, the incidence of injuries and deaths on certain pieces of highways. That's how these kinds of decisions will be arrived at.

Mr David Johnson: I'm describing the conditions to you, though. Try to set all that aside—

Mr Brittan: In the exact case you've described, I'd prefer to use Mr Dadamo's other scenario, and that's the 85th-percentile rule. Remembering that we cannot remove the officer's discretion or the provincial offences officer's discretion, the 85th-percentile rule might well apply, that being that we would assess and determine—and the photo-radar device will give us the tool to do this. It's measuring the speed of every vehicle that passes, even though they may not be speeding or they may be speeding marginally above the limit. Once we've ascertained the speed limit of 85% of the traffic, then we can make a determination as to where to set the device so that it captures photographs of speeders in the top 15%.

To use your precise example, if 85% of the traffic in the scenario you've described was travelling 120 or less, then 15% of the traffic would be travelling faster, and that's the group photo-radar would address: the aggressive driver, the driver who irritates the other drivers.

Mr David Johnson: Would that mean that in certain circumstances it's possible that 15% of the vehicles would receive tickets? I'm having a hard time getting my mind around that. If 15% of the vehicles were to receive tickets, if that's possible—and I'm sure you would come back and say no, that wouldn't happen in all circumstances—but if even any number approaching that were to receive tickets, I think you'd have one awful public relations problem.

Mr Brittan: That's possible, but frankly, we wouldn't be meeting our objective. You see, the objective is to reduce the incidence of speeding, because if we can reduce the incidence of speeding, we know the positive benefits that can flow from that.

If I were sitting on the roadside under the scenario you've described with a photo-radar device and if 85% of the vehicles were going by me 20 kilometres over the speed limit, I'd be extremely disappointed. Frankly, I find that hard to imagine.

Mr David Johnson: But you're saying that's possible, that 15% of the vehicles could.

Mr Brittan: Theoretically.

Mr David Johnson: I guess you're saying that if 85% of the vehicles were travelling at 110 kilometres or less, then the 15% that would be travelling at over 110 kilometres would also be susceptible to tickets.

Mr Brittan: I think that's quite possible. Statistically, I'd like to suggest to you that in the state of Victoria in Australia, in December 1989, about 1.6% of vehicles travelling on photo-radar highways were travelling 30 kilometres or more over the speed limit. When photo-radar was introduced on a widespread basis, a much larger basis—in fact, on day one they began with 50

photo-radar mobile machines and 20 in intersection control—by March 1992, they had reduced the incidence of speeders 30 kilometres or more in excess of the speed limit from 1.6% to just barely over 0.5%. If you examine that, that's a very significant reduction in the incidence of speeders significantly over the speed limit.

Mr David Johnson: Not many people would argue about those who are travelling at 40 or 50 kilometres over the speed limit, that sort of thing, but it's the bulk of the people who may be travelling much closer to the speed limit. There is a perception, and I'm sure you recognize it, that particularly on clear days, with no ice or snow or rain problems, many people do travel just above the speed limit, and if they happen to fall into that 15% and receive tickets in great numbers, then I think there's going to be a big problem.

You have also indicated that there's going to be a pilot project during which the mechanism will be staffed, and that's your intention. If that is successful, what is your view in the longer term beyond that, again in terms of having the mechanism without staff? Have you ruled that out? Are you saying that nowhere in the future do you see the possibility, even if the pilot project is successful, of having the mechanism, the photo-radar, not being staffed?

Mr Brittan: During the six-month pilot program, the OPP proposes to staff with uniformed sworn police officers. Subsequent to the pilot, assuming we're successful, and we certainly hope we will be, we think there might be less expensive ways to staff photo-radar because this likely may not be the best use in the long term of a sworn police officer. At the present time, we have not seriously considered the installation of photo-radar units for highway speed control in unattended situations.

Mr David Johnson: You have not at the present time, but this is the purpose they're designed, as I understand it, to be put up on a pole or something and left unmanned. I find it a bit curious that you wouldn't even contemplate that. Certainly there's a perception out there that what you would be gearing towards in the long run is precisely what these things are manufactured for, to stick them up on a pole and have them pick off the 15% who are beyond the 85th percentile. Is that not even a remote possibility? Are you telling us here that under no circumstances would that happen?

Mr Brittan: No, sir. Technology has been changing and has been improving. For example, in the 20-years-plus history of photo-radar in Europe, photo-radar began in a static setting in an armoured box which is heated in the wintertime and air-conditioned in the summertime, and that is still a strategy that's available to us. Today's photo-radar is designed to work not only in a static mode in a given location but is designed to be operated in a mobile mode. While we are presently in the tendering process for photo-radar units for Ontario, it's our expectation that the equipment we ultimately buy will be able to operate both statically and mobile. That significantly enhances the influence the device will have.

Other than apprehending visitors to our province, there's very little advantage in putting photo-radar in static locations so that the customary daily traffic knows

exactly where it is. Then the only people static locations capture photographically are visitors, and we don't see that as an attractive strategy for the province of Ontario. However, I am not saying we will never do it, because we may experiment in a variety of ways and that may turn out, in some locations, to be a practical strategy.

Mr David Johnson: On the first day, it was indicated that this is not a revenue grab. Somebody, I think perhaps the parliamentary assistant, said there would be signs indicating that it was in operation. What you're saying now I think is somewhat the reverse of that. You're saying there's little benefit in having the photo-radar in a static location, that it would only enforce on visitors, that type of thing. So I'm a little confused.

Is the public going to be made aware of where these are operational? Are they going to be made aware that they're operational just in a general sense in the province of Ontario on any street, or are they going to be made aware that in this specific stretch of road for the next five kilometres, "Beware of photo-radar"? How is the general public going to be made aware of the situation?

1100

Mr Brittan: I think that's a very valid point. Perhaps I could help the members understand the rationale behind the issue of signage and the issue of advising the public where photo-radar is located. I'm quite certain that the Ministry of Transportation's strategy in conjunction with the integrated safety project is to sign on a general basis. Let me explain to you the rationale for that.

Envision a section of Highway 400, perhaps by Canada's Wonderland because I can relate to that, and imagine we put a sign on the roadside, perhaps a permanent sign or an electronic sign that says, "Photo-radar ahead," and imagine it's a Friday evening and we're travelling north. You could intuitively understand that this will have little if any benefit. In fact, this can have a very negative effect, because what this can create is a sudden slowing of traffic in multiple lanes, the possibility of rear-end collisions, the likelihood of disruption of the traffic flow.

The concept of attaching a sign and then a quarter of a kilometre or some distance down the road having a photo-radar unit will only encourage the driver to slow down, and then presumably his behaviour will return to what it was when he passes.

It seems to us, having considered this carefully, that the strategies employed in New Zealand and the strategies employed in Australia, where they sign on a general basis—if we tell all drivers everywhere, "Photo-radar is in use in Ontario," it will have the greatest positive impact, because drivers must modify their behaviour because they don't know exactly where it's going to be.

From a police perspective—after all, our objective is to modify the behaviour, reduce the incidence of speeding, reduce injuries and deaths; that's our only objective—frankly, if we can slow everybody down everywhere, the benefits will be fully realized.

Mr David Johnson: I can understand how that would be your response, but it does rather counter the statement I believe I heard, and I think it was from the parliamen-

tary assistant, that people would be made well aware of this situation. That certainly wasn't what I had in mind by being fully informed.

Mr Brittan: I don't think I've countered his position at all. I'm sure all citizens of Ontario will be fully aware, and I might say we'll also make sure that our visitors to Ontario are aware, just as we do with seatbelts.

Mr David Johnson: Would this be applied to any kind of street, road, highway in the province of Ontario, or would there be certain kinds of situations where it would be much more likely or much less likely? For example, I think we've talked about Highway 400. I guess we all agree that would be a good area to put it, at least from the point of view of revenue, but could it also be used on the Gardiner Expressway? Would it be used on local streets? Where do you see it being implemented?

Mr Brittan: I assume you're asking about after the pilot program, and the answer to that is yes. Photo-radar is a tool that can be used in a positive way anywhere you have traffic that might choose to exceed the speed limit: school zones, hospital zones etc.

Mr David Johnson: In the case of the five teenagers, the tragic case you mentioned, what sort of street was that on?

Mr Brittan: It was a provincial highway.

Mr David Johnson: One of the major highways?

Mr Brittan: It was a two-lane highway.

Mr David Johnson: We're aware, unfortunately, of the accident back in the spring in Caledon, where a number of young people were at some sort of party on a back road. I just have difficulty seeing you placing photo-radar on a road such as that. There wouldn't be the traffic there. I'm just wondering what kind of impact this might have in a situation like that. Many of the roads that might be unsafe in Ontario would not necessarily be the major highways, the 400s, the 401s, but would be the back roads where there are blind curves or hills or that sort of thing. I'm wondering if you can assure us what sort of attention those kinds of roads would get through the photo-radar system.

Mr Brittan: I appeared at the most recent inquest at the request of the coroner to discuss the government's commitment to road safety and photo-radar. I return to your earlier question about signage and about the impression we must create on all drivers in Ontario that photo-radar might be found anywhere. In the Caledon scenario—due to my involvement as a witness, I became fully aware of the dynamics of the Caledon scenario—there's no question in my mind that if it was understood by Ontario's drivers that photo-radar might be found anywhere, including provincial highways, including regional municipality highways and roads, both multilane and two-lane, if there was a general understanding that photo-radar could be found anywhere, at any time, it might very well have influenced what occurred on that day.

However, speed was not the only factor which touched on that particular incident in Caledon; there were other factors as well. But I personally feel satisfied that if there's a general understanding and impression, we might very well see a positive influence on that kind of event.

Mr David Johnson: Superintendent, we've had radar enforcement by airplane for many years in Ontario, and that's generally well-known. You run across streets in just about all parts of the province where it indicates that there's that sort of enforcement. I wonder why that wouldn't have had a greater impact. It doesn't seem to have had the same impact that you believe that photo-radar will have.

Mr Brittan: I'm impressed that the member still thinks we're using aircraft. However, that is not the case.

Mr Grandmaître: The signs are still there.

Mr Brittan: That's correct. We haven't taken down the signs, but the Ministry of Transportation is not renewing the white bars. I think it's important for you to know why we've suspended our aircraft program, which, by the way, had no radar component; it was a mechanical stopwatch. It was because it was extremely labour-intensive in terms of the number of ground units that had to be dedicated to the single aircraft.

Let me give you an example. An aircraft, which is costing us for the pilot, the aircraft itself and the observer flying in a circle over a piece of highway, could capture so many violators that it took sometimes four, six, eight or 10 members of the OPP operating on the highway to write the tickets. Subsequently, many of them had to go to trial. In many of them, the offender entered a not guilty plea and never appeared at trial. That meant we had to send our police officer, at expense to the public, most often on overtime, for no reason at all.

Over the years, the labour costs of aircraft enforcement finally reached the point where, in terms of allocating our resources, we made a decision—in fact, I was one of the participants in that decision—several years ago to suspend that program in favour of the moving radar device which is installed in hundreds of OPP vehicles and still is there today and will continue to be used.

Mr David Johnson: I can understand that it would be very expensive, but my point was that the knowledge that that sort of system was in place didn't seem to have the impact you're hoping for.

Mr Brittan: And there was a very good reason for that, sir, and I must remind you. It's because drivers, again except for visitors to this province—and having worked aircraft radar personally as a constable, I can tell you that many of the people who got caught unfortunately were from Michigan and Ohio. The people who lived in Ontario knew how to recognize the locations where aircraft were being used, and they very correctly slowed down, and of course they accelerated after they left the zone, sometimes with not so complimentary observations to officers on the roadside. I remember that well, unfortunately.

Mr David Johnson: I have a copy of the 1992 annual report of the Metropolitan Toronto Police. It shows in here, as you've indicated, that various offences are up. Break and enter is generally up, year after year; it's down one year, but generally the trend is up. Sexual assaults are up, non-sexual assaults are up, robberies are up, but it shows clearly that the traffic accidents in Metropolitan Toronto have been declining from 75,000 in 1988 down

to—it's still a big number, but down to 57,000 in 1992. Essentially, there's been quite a downward trend. It shows that the injury accidents and persons injured are also declining in Metropolitan Toronto, from almost 19,000 in 1988 down to 11,000 in 1992. In this case, there's been a decline every year. The trend seems to be one that we would all endorse, that the accident rates in Metropolitan Toronto have been going down.

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With that as a background, it seems that with the measures that have been in place, at least here in Metropolitan Toronto—I don't have the equivalent for the province of Ontario—the experience has been getting better and better. It again raises the question of why this sort of enforcement technique is required, one about which, as you've indicated yourself, there's a great deal of hostility.

Mr Brittan: No, sir, I'm sorry, I didn't mean hostility; a misunderstanding.

Mr David Johnson: That may be open to interpretation. If we start picking off the top 15th percentile, I think there may indeed be hostility. With that background, isn't this the wrong time? Do we really need it? Our accident rate is improving without it.

Mr Brittan: I'm sure my friend from the Ministry of Transportation can comment on what we perceive to be a decline. I'd like to give an observation on that and then comment.

Within OPP jurisdiction, we too are observing an extremely modest decline in the gross number of collisions. Unfortunately, the total number of fatalities, as I recall, is somewhat flat; it's staying around the 1,100 mark. We've given great thought to why there could be this decline, as small as it is.

We'd like to take credit for that. We'd like to be able to say it's because of our aggressive traffic safety campaigns and the fact that our dedicated men and women are out there writing tickets every day. But of course when we look statistically, as I've already told you, our ticket volumes are down very significantly.

We've concluded why we think there might be a decline. My friend might have other evidence, but anecdotally, we think it has to do with the economic times. We think it has to do with the fact that people are driving fewer miles, people are travelling shorter distances, people are using forms of public transit or pooling up. While we have no evidence to support this, and I could be absolutely wrong, that's our personal feeling, and it's fairly widespread among police managers. We think that could be the reason we're seeing this slight decline.

Finally, I'd like to say that 1,100 lives lost in this province and 90,000 people injured is still far too many. In fact, if you were sitting and making decisions with respect to legislation that could save even one life, it seems to me you would have a compelling reason to do that. Whether we're seeing, for some serendipitous reason, a decline which maybe we can attribute to exactly this or that—all I can say is I'm thankful for it, but none the less, 1,100 people killed and 90,000 people injured is far too many, and something needs to be done.

Mr Daigeler: Obviously, all of these questions, including the ones that were asked and hopefully are going to still be asked—that they get an opportunity from the members of the government side—I think are important ones. That's one of the purposes of at least holding these minimal hearings, I think, to clarify some of these issues and some of the concerns.

As I indicated last week, the parliamentary assistant addressed some of the questions that have been raised in the public mind, and some of the answers were provided.

One of the problems I find, why we are in the state we're in right now surrounding this bill, is that I don't think we ever received—by “we” I mean the opposition parties and the public—a proper, well-developed briefing package on this matter. That includes a package that spells out the statistics that show the relationship between this photo-radar measure and safety concerns in other countries.

We are being assured orally that this is the case, but when I get letters from the public, when I get calls from the public, I like to send them hard facts on paper and let people make up their own minds. That would be my first request to the parliamentary assistant: Even though we're finishing this, I still would appreciate some statistics, something on paper that shows what in fact has happened. Is there a direct relationship between photo-radar and public safety in other countries, and what is it precisely? There must be statistics available, because they're being referred to. I include the European countries in that as well. That's a request to the parliamentary assistant.

My first question to the parliamentary assistant: You made a lot of the fact, at least last week, that this is just a pilot project, that, “We just want to try something out,” and you seemed to be backpedalling on the potential long-term life of this initiative. If you're just trying to see how it affects safety and you want to see how it all works, why didn't you test it out simply as a pilot project without the enforcement of the law? Occasionally it happens, for parking infractions and so on, other minor infractions, that you get a friendly warning and they say to you: “Please realize that you're in the wrong place at the wrong time,” or you're doing this or that. “Here's a warning. We're doing this as a courtesy right now but as of three months later, or whatever, we're going to be serious.” Frankly, at least on me, this has quite an impact. If you're just wanting to do a pilot project, why don't you do that on a friendly reminder basis first, try it out, and send people a note in the mail that says, “You have been speeding.”

Mr Fletcher: We caught you.

Mr Daigeler: “We caught you. Here's the evidence. We advise you that if you keep doing that, you might very soon be seriously affected by this, but this is just a warning.” If all of this works and you're satisfied with your experiment, why not bring it in then as a bill?

Mr Dadamo: I don't backpedal on anything. People who know me know that I like to tell it the way it is. I think you and some of your colleagues have alleged in the last little while, both in the Legislature and on this floor, that this is a tax grab. I don't think this is a tax grab. If you want to see a tax grab, wait till your budget

in Ottawa in the next couple of months and then we'll talk about a tax grab.

In terms of a six-month pilot project, we don't want you to lose sight of the fact that that's exactly what it is. A six-month pilot project on the streets of the province of Ontario to watch what speeders are going to do is no different from a pilot project we have with the casino in the city of Windsor, that I represent. If it doesn't work in six months, we'll gladly withdraw it. We've said that in the Legislature, we've said that here, and we say it again. It's not meant to be a tax grab.

But I think it must be said that while we go into a six-month pilot project mode, starting hopefully in January of next year, we bring the police on side and therefore we bring the seriousness of what's happening on the streets. They work together: If you don't bring the police into the project, I don't think people are going to take you seriously. Think about it. We're talking about speeding; we're talking about people killing themselves on the highway because they happen to go over the speed limit. You've seen signs; you've seen the bumper stickers that say, “Speed kills.” I want you to take that extremely seriously.

Mr Daigeler: I think we've established one fact, that you are saying this is an experiment. All I am saying is that if it is an experiment, why change an act right now? Why not make it an experiment? Obviously, the notification would still come from the police; the police would still be involved. All I am saying is, couldn't this have been done as a pilot project without the full force of the law, without changing all of this and getting everybody upset, without getting the proper information and being able to show that it works? You probably would have saved yourself a lot of aggravation if you had proceeded in that way. Be that as it may, I'm just making that as a proposal. Obviously, it's too late unless the government is willing to withdraw it.

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You are referring to the fact that this is not a revenue grab. Well, perhaps you would care to comment on that article that appeared in your own magazine, *Topical*, where a senior official in the government referred to this measure as a revenue measure and that this would be a good example of how the government can collect more money. Nobody has responded to it. You have an opportunity to set the record straight, because it isn't just us who have been saying that.

Mr Dadamo: Let me say it is and always has been part of the safety initiative that we as the government have been working on for the last couple of years. I don't need to sit here and preach to you or anybody who's listening that this is part of the graduated licensing system, part of the bicycle helmets, and it goes on and on. This is part of a safety package. I'm not here to dispute what someone in the ministry has said, because I haven't heard the comment nor have I had a chance to talk to this particular person; I don't know who it is. It's part of the safety initiative. I know that you know that.

Forgive me, but I need to go back to the seriousness of this whole matter and how you're alluding to the fact that we can't draw the police into this. If somebody—

Mr Daigeler: That's not what I said.

Mr Dadamo: Just a second now. If somebody's 45 or 50 kilometres over the speed limit on the QEW at 4 o'clock in the afternoon and we send them a picture in the mail a week later and say, "Ha, ha, we're only joking," and there's no fine attached, how seriously would they take us? I don't think there's a government in this province that would have taken it in that direction or tackled it in that way. I think seriousness becomes a real operative here and I think you need to think about that.

Mr Daigeler: Obviously, a pilot project is not as serious as the final step, and all I'm saying is that if I were the minister I think I would have looked at that. But it's up to you to decide on this matter.

The officer and the parliamentary assistant as well referred several times and objected to the use of the term "Orwellian" around this. It may be a bit strong, but it isn't just us on the opposition side who have been saying this. In that famous letter from the Information and Privacy Commissioner, he uses that too. He is very concerned about the privacy implications of this particular government initiative.

Perhaps you can set some of my worries at ease. Are we going to photograph the front licence plate or the back licence plate? In some other jurisdictions it's the back licence plate, and some of the worries about identifying some of the people may not be as strong as if you are taking a picture of the front licence plate. Could you tell me what is planned?

Mr Brittan: I have to accept some responsibility for the position that the privacy commissioner of Ontario took. I met with his executive staff on at least two occasions and I presented some examples of 8 by 10 colour photographs that were obtained from other jurisdictions outside Ontario. What I didn't realize was that they interpreted those as being representative of what is sent to the violator. I intend to apologize to the privacy commissioner, because I think I left his staff with the impression that every violator in Ontario gets a beautiful 8 by 10 colour glossy of the scenery and the vehicle and whatever might be seen in the background.

Of course, it's important to provide the plate holder with some context so they can clearly see where the vehicle was being operated when it was photographed, and I should tell you the privacy commissioner's executive staff concurred with that. There's no point sending somebody a photograph of their vehicle and having blanked out the context, because you couldn't ascertain where the picture was taken.

We did come to an understanding on that, and I'm pleased to be able to tell you today—and I'm expecting to be able to meet again with privacy commissioner's executive staff—that we feel fairly confident that the reproduction of the photograph we will be providing to violators in Ontario will be in a black and white photocopy format, a much smaller dimension than an 8 by 10 glossy colour, much smaller but certainly adequate to help the violator identify clearly, "Yes, that's my car, and yes, that's clearly my licence plate," and they'll be able to see some contextual image in the photograph to help them remember, "Yes, I was on the Queen Elizabeth and

I remember going past that particular location."

Mr Daigeler: Is it front or back?

Mr Brittan: I was just about to come to that. It's our intention to photograph the rear plate. However, the technology of photo-radar is changing rapidly, and one of the reasons rear-plate photography has been seized on as the most advantageous is because white flash light, a white light, has to be used, or has had to be used, to illuminate the plate. This white light is used in the daytime and at night too. It's a strobe light, and this can be bothersome to some drivers.

However, in recent months technology has changed. We're led to understand that some manufacturers-inventors of photo-radar equipment are now using infrared light, which is not visible to drivers. It is possible that a vendor will propose to our photo-radar project photography equipment which uses infrared, which will not be visible to the driver. If circumstances such as that were to arise, we would feel much more comfortable photographing either the front or the back.

Mr Daigeler: I'll accede to Mr Grandmaître. If there's time, I'll come back.

Mr Grandmaître: Superintendent, I'd like to talk about our changing society and also policing in the province of Ontario. It seems to me that I'm hearing contradicting messages. Only a short while ago Susan Eng was before the government agencies committee telling us what Metro intends to do in the next 12 months; that the presence of police officers on the streets of Toronto and in Metro should be seen more often and that they talk to people, because 75% of the solutions to crimes are apparently found by personal contacts with officers walking the beat.

It seems to me that policing in the province will be operating like our banks pretty soon: We will never see the manager; we'll use plastic, get our money, walk out of the bank and never see the bank manager.

If it is part, as pointed out by the parliamentary assistant—which is contradicting himself because he said in his presentation that photo-radar will work in the province of Ontario as it has in other jurisdictions around the world—why have a pilot project? Why don't you just do it? What is happening with policing in the province of Ontario? Are we trying to get away from this personal contact?

Mr Brittan: I think that's a very good question, sir, and I appreciate your asking it because it gives me an opportunity to give you a state-of-the-art perspective.

I cannot comment with respect to the Metropolitan Toronto Police Service because, other than what I read in the newspaper, I'm really not qualified to comment. But I can comment with respect to the Ontario Provincial Police because I've worked on strategic planning committees and, as the director of the operational policy and planning branch, I've had some significant say with respect to future directions in OPP policing.

It is clearly the intention of the OPP, and it has been expressed at every management level and every single employee is aware of it, that we are moving our people back to the street, back to the citizens of Ontario, through

our aggressive community policing program which is operating in virtually every community in Ontario and which, I must say, is being supported admirably by community resources.

Photo-radar, as a tool, helps to facilitate and helps to make possible further improvements in our community policing program. If I might just say, if we can introduce devices which are labour-effective and free up people who right now are forced to sit on the side of the highway in individual police cars, working with a hand-held radar unit, flagging down speeding motorists as they pass, if we can free these people and return them to the community, which, by the way, is the strategy and the intention of the OPP, if we can turn these people to other kinds of aggressive driving behaviour that we've referred to before, the tailgaters, the improper lane changers—and these are the things our communities are telling us they want addressed—then we will be meeting exactly the heart of the comments you've just made. I'm very pleased to be able to tell you that photo-radar, as a tool, will be able to help us further enhance our community policing program.

1130

Mr Grandmaître: But you just pointed out tailgating and changing lanes and so on and so forth. This will not be part of your photo-radar, right? The government is instituting a program to diminish the speeds on our highways, but your photo-radar program will not prevent the drunken driver, the driver who's tailgating, switching lanes.

Mr Brittan: Your observation is absolutely correct. But what it does—and perhaps I haven't clearly articulated what it does—is that it frees up officers who are involved in labour-intensive forms of speed control today. I've used as the example the hand-held radar, which requires one unit sitting on the roadside with the officer with the radar, and two or three or four units down the road, the officer out of the car with his radio, microphone back and forth, flagging down the yellow Pontiac that's in the centre lane. What photo-radar does is that it releases those individuals to other, more important work, exactly as you've just described.

Mr Grandmaître: I'm pleased that you've pointed this out, because we keep talking about photo-radar but I think we should be addressing the total safety of our highways. I know it's part of some program, but we haven't seen this program. People would be better educated if this full package, this full program, was before a committee to educate people on what are the stages of our total safety package. Maybe we would better understand all about photo-radar, because as you pointed out, people are not very well informed about the photo-radar program.

I'm simply saying that if you want to free up officers—and as a former police commission chair for 13 years, I can understand that you want to free up people to do other things, less labour-intensive. I can understand this. This is why this side of this House has a terrible time understanding, because we haven't seen the total safety package.

I know it's not your responsibility. It's the govern-

ment's responsibility to provide us with a total package and to stage it, or simply inform this committee what the future of policing speeding on our highways is all about. Maybe we would better understand the photo-radar program.

Mr Brittan: Photo-radar is only one component of a coordinated and integrated highway safety program. I'd like to defer to my friend from the Ministry of Transportation, who I think can offer you more insight into that broader program.

Mr Hughes: In response to the comment about the government's overall road safety strategy, the government is developing a road safety agenda, and we'll be coming forward early in the new year with a comprehensive document which lays out a five-year strategy with a stated goal, which you've heard publicly several times already, of making Ontario's roads the safest roads in North America.

If I can make perhaps a few comments on that, the reason we're getting into this is that despite the comments you heard earlier about the downward trend in fatalities and injuries—and there are reasons for that, some of them economic, some of them because of safer vehicles, some of them because of safer roads. That is good news, that we're on a 10-year downward trend, or stabilizing trend at least. In fact, Canada is fifth-best in the world when it comes to road safety statistics and Ontario is the fourth-best jurisdiction in Canada.

But the bad news, as the superintendent alluded to earlier, is that we still have one person every eight hours being killed on Ontario's roads, and 90,000 injured. The price-tag for this—and we're all concerned with price and costs these days—based on a recent research study we've done in my branch, is \$9 billion annually. That's a huge figure.

We're concerned with the overall public attitude and social attitude about the acceptance of this level of carnage on the roads. Despite the fact that relative to other countries and provinces we look good and things are moving in the right direction slowly, there is an acceptance of the inevitability of road trauma. Because we know from past studies that 85% of collisions are due to driver error, we know that they're not inevitable and that they can be prevented.

Thus the road safety agenda and thus the value of things like graduated licensing and photo-radar, not just because they're good in and of themselves, which they are from a road safety point of view, but because they're part of a bigger package, long-term, which we hope, with the continual bombardment through the media and through public visibility of these programs and the concern over road safety, will change social attitudes. Changing social attitudes will translate into changing driver behaviour over the long term.

We know this is possible. We've seen it happen with smoking; we've seen it happen specifically with drinking and driving. We know it can be done. It requires a big investment; it requires a long-term strategy. As I say, the big pieces that you've heard about recently, graduated licensing and photo-radar and the integrated safety project, are the first pieces of this agenda.

Rather than delaying on the implementation of these things and holding off on the large umbrella announcement of the road safety strategy, we decided to move ahead on these quickly. But the road safety agenda itself is coming in the new year, and there will be documents and public statements and a whole public education and awareness campaign as part of the rollout of the road safety agenda.

As I say, in the long term and over a five- or 10-year period, what we really want to do is not only stop people from speeding and improve young drivers; what we want is for people to start taking driving seriously and responsibly and recognize it as the public health issue it really is. If we were killing 1,100 people a year with some other means, you can bet there'd be a great hue and cry for the government to do something about it.

So this is our response. Although we have a relatively good picture from a road safety point of view when we look around us at other jurisdictions and countries, we're not willing to accept the 1,100 lives and \$9-billion price-tag annually.

The Acting Chair: Thank you, Mr Hughes, for representing MTO. Any brief comments regarding that?

Mr Grandmaître: I agree with you that social attitude is a big problem, and this is why we would like to see the total package of your safety features. I think the best way to change social attitude is by having people like the superintendent and other police officers present, especially in our schools, and to have better programs to educate our people.

Photo-radar may be better accepted by the general public if all of these things were well known to our public in Ontario. This is why people are saying this is a tax grab, because they don't know what the rest of the total package is which is sitting on your desk and not being distributed. I think social attitude can be changed, but it can be changed by talking to people and not by using more automated methods or machines. Machines can work very well, but if you want to change attitudes, you'd better talk to real people and not a robot.

1140

The Acting Chair: That completes the time rotation. We have several other speakers. Could we limit ourselves to one question each and get all of the speakers in? Ms Mathysen is next. Go ahead, please.

Mrs Mathysen: My question is to Superintendent Brittan. I was listening very carefully when you were talking about the safety hazards that officers face stepping out of that cruiser.

I wondered, in light of some of the concerns we've heard in the recent past about the hand-held radar and officers experiencing elevated cancer because of using that device, if the photo-radar would serve to help in terms of reducing that contact? Precisely what kind of information do we have about the machine in terms of its safety?

The second part of the question: Would photo-radar help in terms of reducing the number of high-speed chases? We've had also a great deal of concern expressed about the dangers of the high-speed chase for the driver

and the officer in pursuit. Could you comment on both of those, please?

Mr Brittan: Hand-held and other kinds of radar devices that are presently in use in Ontario, without exception, all meet the standards as established by the federal government and standards as established and monitored by the Ontario government's Ministry of Labour.

However, there is a nagging concern on the part of police officers that while our equipment meets or exceeds the requirements of all standards and is said not to be dangerous, and in fact we do not believe it is dangerous, there is a nagging concern that nobody seems to be able to resolve that there could be some long-term implications of the close proximity to hand-held and in-car radar devices. Because we can't really answer those concerns, except to say that there's no evidence that this could be injurious, there is less desire to use these tools, and it's difficult to argue with that.

In the case of photo-radar, the radar-emitting device is not in the vehicle. It's outside the vehicle. It's mounted outside the vehicle, typically. I couldn't say that every single manufacturer installs the radar-emitting device outside the vehicle, but certainly the ones I've looked at do. Frankly, I think your question's very astute, because there could be much less concern, if not no concern, about radar emissions. It's a very low-powered beam, it's a very finite beam, very narrow, and because the emitter is outside the vehicle, I think we could eliminate once and for all this personal, very rational concern, one for which we have no real answer.

Now, turning to your second question about high-speed pursuits, if I refer to my own experience, even though it's been some years since I was in the field, I did work in the field for many years and, yes, I did engage in pursuits under policies more liberal than we have today. As you probably know, there are very reasonable policies that have been implemented by the government with respect to the management of pursuits. When I did them, they were more liberal than they are today, but they still do have them.

What happens is that a speeder comes by, in the case of the traditional form of radar or speed enforcement that's used today, at a very high rate of speed, and even under today's guidelines can be perceived to be a criminal act. Some kinds of driving behaviour is immediately identified as a criminal act, as opposed to an infraction of the Highway Traffic Act, and therefore the police officer is authorized to engage in a high-speed pursuit. They do happen, and they are dangerous. They're dangerous not only to the person being pursued and the general public, but they're dangerous to our men and women, and that's a very real concern to us.

Traditional radar speed control, as we're using today, from time to time does result in a high-speed pursuit. In the case of photo-radar, there will never be a high-speed pursuit.

Mrs Mathysen: Thank you. I think we should depend on the experience that you bring to the answers you've given.

Mr Turnbull: Mr Hughes, it's good to see you here at these hearings. When we talk about the 85th percentile of drivers, what would you say the speed on most provincial roads is typically, relative to the existing speed limit?

Mr Hughes: Perhaps the superintendent is more qualified to answer that question. The question was, what percentage of drivers obey the speed limit?

Mr Turnbull: Yes. We've been talking about the 85th percentile, and I'm curious. Notionally, I would suggest that on most country roads—I mean highways, but not the main 400 series highways—it would appear that typically people in fair weather are doing 95, perhaps even 100, on 80-kilometre roads. Between the two of you, whoever could answer that, and I'm leading to something, obviously.

Mr Hughes: I hesitate to give you a number because I really don't know and I'd just be guessing based on my own observation and experience. I'm not sure where you're heading with this, but a point I'd like to make about photo-radar and compliance is that we think photo-radar is a good safety initiative because it will reduce average speeds.

Mr Turnbull: Let me explain where I'm leading so you understand what I'm getting at. It has been suggested by some safety people, who are eminently more qualified than am I to comment on this, that perhaps the posted road speed is not the appropriate speed and that the 85th percentile of people are not complying with the speed limit today. That leads me to ask the question that if that is the case, what would be better in terms of safety—

Mr Hughes: We were headed in the same direction.

Mr Turnbull: Okay. What would be better: for us to raise the speed limit to a number, and let us hypothetically use, just for the sake of this discussion, 100 kilometres an hour on those which are currently 80-kilometre-an-hour roads and the 100-kilometre roads up to 120, if that happened to be what the 85th percentile was doing, and then strenuously enforce the speed limit above that, not at 20 kilometres over that but at perhaps five kilometres over that so that the penalties are so massive that only a complete fool would violate the speed limit? My question then revolves around: Would it have more effect in terms of safety? I understand from the safety people that the most problematic aspect of speed is the differential speed and people passing and pulling in, that that is a greater factor in accidents than speed in and of itself: differentials in speed.

Mr Hughes: I'd like to come at your observations maybe from a slightly different angle and then I'll come back to the speed differential question. As I was starting to say, we see photo-radar as a wonderful opportunity to reduce average speeds, and I've already talked earlier today about the correlation between speed and safety. We accept that and believe in it and we believe that if photo-radar can reduce average speeds it will definitely have an impact on safety.

So the question comes down to, how will photo-radar work better to reduce speeds than, say, the current situation? There are two major points here to make in

terms of our confidence that photo-radar will increase the compliance rate with speed limits.

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One of the advantages of working in safety policy and research is that you get to read a lot of stuff from all around the world and about the experiences of others. This is an enforcement effort, specifically an enforcement effort at reducing speeds, and two of the major factors that influence the success of enforcement efforts and the compliance rate of the travelling public are (1) the visibility and awareness of the program, and (2) the certainty of detection.

Mr Turnbull: I think you're going off in a different direction from the question I asked. Maybe I'll come at it in a slightly different way. Let us say we were rigidly to enforce with massive fines the present speed limit. What would then be the impact on our roads in terms of whether we can move the traffic volumes we have at the legal posted limits we have today? As I say, notionally I understand that the 85th percentile is doing significantly over the posted limits today.

You have to understand that in this discussion, with the opposition parties not being in favour of this legislation, we are in favour of safety measures, and John, you know the efforts I made with respect to graduated licences. We're concerned with doing the most logical and least intrusive action which will result in the greatest reduction in accidents. I'm very hard pressed to believe that the ministry doesn't have some figures on what the 85th percentile is doing in speeds. We've been bandying it around in some of the answers—

Mr Hughes: I'm sure we do; I just don't have them at my fingertips, but I'm sure we do have them.

Mr Turnbull: Perhaps Inspector Brittan has them.

Mr Brittan: Well, I'd like to reflect the attitude and philosophy of a police officer, a generic police officer. I think I can do that.

Mr Turnbull: First of all, could you maybe answer specifically—

Mr Brittan: I will. I'll come to the question. I think it's important for you to understand—

Mr Turnbull: We're very pressed for time. I'd like to start out with the information about what the 85th percentile is doing in terms of speed.

Mr Brittan: From a police officer's perspective, I wouldn't have any idea. I do know, from a police officer's perspective, that the speed laws in this province are set by someone and I'm hired to enforce them, and the Highway Traffic Act exists and gives me the authority to do that, and that's the only interest I have.

Mr Turnbull: Inspector, that was the reason I was addressing this question to Mr Hughes. I understand that your job is—I cannot believe that the ministry would bring a so-called safety initiative forward if it didn't have some of the most elementary statistical information. In answers to both the opposition and the government members, there has been reference by the panel of gentlemen here to the 85th percentile, but now I'm asking you what that speed is and nobody seems to know.

My contention is that surely we could achieve much greater reduction in loss of life if we were to set the speed limits in good driving conditions and have a differential speed limit according to road conditions, which is done in some—

Mr Fletcher: We can't do that.

Mr Turnbull: The gentlemen's saying, "You can't do that." Excuse me; you're wrong.

The Acting Chair: Mr Turnbull, please address the Chair, and we must conserve the time.

Mr Turnbull: In some administrations, as you know, there are differential speed limits according to weather.

The Acting Chair: Is there a response to the question? Do you have a short response?

Mr Hughes: The issue of raising the speed limits is something I think I addressed earlier. As a general rule, the higher the speed limit, the higher the fatality, injury and collision rates. Second, the higher the average speed, the greater the severity and significance of the injuries and the damage of any collision.

The Acting Chair: Thank you for your response. Mr Daigeler: just a very short time because I have two announcements by 12 o'clock.

Mr Daigeler: The insurance industry, I'm sure, is one that would be interested in supporting this particular measure, but yesterday I got a fax from an insurance broker who really is saying that people are not aware that with the photo-radar and the likelihood that a lot more people are going to get caught, this is going to have a tremendous impact on their insurance rates and their ability to get insurance.

The government is saying they won't have any demerit points because one isn't 100% sure who the driver was. But on the owner of the vehicle, this will have a tremendous impact on the ability to even get insurance. This gentleman from Jaccett Insurance—I think he faxed it to other people as well—is very concerned that people don't know this and will not be able to get insurance or, at the minimum, insurance at a reasonable rate. I wonder whether the parliamentary assistant can speak to that. Is that the case?

Mr Dadamo: I think Mr Hughes would like to respond to that.

Mr Hughes: The Insurance Bureau of Canada is formally on record as supporting the photo-radar initiative. They recognize, I believe, the experience in other jurisdictions and the ability to collectively reduce average speeds in a given jurisdiction.

Mr Brittan: I would like to add that if it's possible that the insurance industry can contribute to improving driver behaviour by altering insurance rates based on the incidence of speeding etc among their clients, then perhaps that can have a very positive effect as well. It's another way to influence behaviour in a positive way.

Mr Daigeler: Related to that question of how the owner is going to be impacted, it will be the insurance company of the owner of the car that may not reinsure that particular owner, even though he wasn't the driver. Earlier in our discussions, I think the parliamentary

assistant said that if you're the owner you will be able to renew your licence, even though there may be outstanding fines relating to photo-radar, because of this inability to distinguish between driver and owner. I would just like to know, how in the world are you going to distinguish?

When you go to the licence bureau, when your thing comes up on the computer and they see a fine, how are you going to be able to argue, to say: "No, this relates to photo-radar. I wasn't the driver at the time. I'm just the owner and therefore I should be able to renew my licence"? How are you going to do that?

Mr Dadamo: Mr Burns from MTO would like to respond.

Mr Ross Burns: Perhaps I can answer that. For the record, my name is Ross Burns, counsel with the Ministry of Transportation.

The scheme for photo-radar is that the owner will be charged and that will be connected to the plate holder who has his plates on the vehicle. As a result of a conviction, those plates will not be able to be validated until the fine that's assessed in respect to the speeding offence is paid, and no new permit can be issued. This is currently the system we have in place for parking violations, and that is being extended by the legislation to validation of plates in respect to photo-radar speeding offences.

Maybe there's some confusion, Mr Daigeler, on the licensing. If you're speaking of drivers' licences, there will be no suspension of privileges or the right to obtain your driver's licence as a result of the owner offence of photo-radar speeding. Non-payment of the fine will have no impact upon a driver's licence.

Mr Daigeler: I don't think it—

Mr Burns: You used the term "licence."

Mr Daigeler: —right now has some impact on the driver's licence. But I think, if I'm not mistaken—and I have to re-read Hansard—the parliamentary assistant said you could renew your vehicle licence even though there were outstanding fines because of that. I have to review Hansard, but I think that's what he said, and you're saying this is not correct.

Mr Burns: I can't recall exactly either, but the effect of the legislation is to say, as in the case of parking fines that are not paid, that your vehicle permit cannot be validated or a new permit issued in respect to that vehicle that was involved in the offence. It's identical to what's in place now for parking. But the effect of non-payment of a fine for a photo-radar speeding offence will have no effect upon the driver's licence, or renewal or non-renewal. There will be no suspension of that licence. It only will affect the vehicle permit of the vehicle that was involved in the infraction. I can only clarify it from the legislation point of view.

The Acting Chair: Thank you for your response.

As it's almost time to adjourn, as you can see, pursuant to a resolution of the House of Tuesday, November 16, 1993:

"All proposed amendments shall be filed with the clerk of the committee by 12 pm on the last day of clause-by-

clause consideration. At 4 pm on that day, those amendments which have not yet been moved shall be deemed to have been moved and the Chair of the committee shall interrupt the proceedings and shall, without further debate or amendment, put every question necessary to dispose of all remaining sections of the bill and any amendments thereto."

We have our work cut out this afternoon. It's been proposed that we could meet earlier if routine proceedings of the House are complete before 3:30.

Mr Turnbull: On that issue, I spoke to the parliamentary assistant and the Liberal critic earlier today and proposed that in view of the fact that we're not going to be able to effectively debate the clauses as we go through clause-by-clause, those amendments should be read into the record by the respective members in the period during which we sit prior to 4 o'clock, so that the various amendments moved by the caucuses will be reflected in Hansard. I believe the parliamentary assistant has agreed to this.

The Acting Chair: There is agreement. Anything further? If not, the committee stands adjourned until this afternoon.

The committee recessed from 1202 to 1518.

The Acting Chair The general government committee is resuming clause-by-clause on Bill 47, An Act to amend certain Acts in respect of the Administration of Justice, and we have proposed amendments. Mr Turnbull, you asked about an amendment regarding the preamble. Could we leave that until the end of the bill, please? The preamble is usually dealt with at the end of the bill.

Mr Turnbull: Mr Chair, this is tremendously important to the thrust of this bill; indeed, the preamble precedes the bill. This would add some clarity to the situation. We have asked that we spend this little time we have to read in these amendments. If we move expeditiously, we can get them all in, but I think this should be on the record.

The Acting Chair: Is it agreed that we allow Mr Turnbull to proceed with the preamble amendment?

Mr Paul Wessinger (Simcoe Centre): We are all agreed to read in the amendments, I think, without debate, is that correct?

The Acting Chair: Yes, that's correct. Proceed.

Mr Turnbull: So we will do it in the sequence of the numbering? Okay.

I move that the bill be amended by adding the following preamble:

"Preamble

"The people of Ontario recognize that road safety must be enhanced to reduce the number and severity of vehicular accidents and to control health care and insurance costs by minimizing loss of life, injury and property damage.

"The people of Ontario have a right to expect that their government, in introducing new measures to improve enforcement of the Highway Traffic Act with the stated intention of improving road safety, shall not exploit these measures as a means of raising new revenues for the

consolidated revenue fund, and have the right to expect that any additional revenues raised by said measures shall be appropriated by the Legislative Assembly and dedicated to the funding of road safety programs.

"The people of Ontario further have the right to be protected from arbitrary and unfair measures and to be assured that the results and efforts of pilot projects and new enforcement practices are subject to thorough evaluation and sunset review, to ensure that the projects, programs or measures are attaining their stated objectives or can be modified or eliminated.

"Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the province of Ontario, enacts as follows:"

The Acting Chair: Thank you. I rule the preamble out of order because this act does not contain a preamble. Quoting from Beauchesne Parliamentary Rules and Forms, 6th edition, on page 209, citation 705(3), it states: "Where the bill, as introduced, does not contain a preamble, it is not competent for the committee to introduce one."

Section 1: Is there an amendment?

Mr Turnbull: Yes. I move that the bill be amended by striking out the portion of subsection (3) which adds section 5.1 to the Provincial Offences Act.

In speaking to this amendment, I give notice of my intention later on to move to strike out all of section 2 of the bill, because its primary purpose is to implement a system of photo-radar, under the guise of safety, which is nothing more than a tax grab. I move to strike out section 5.1 in section 1, because it is my interpretation that amendment to the Provincial Offences Act supports the photo-radar project.

We will support aspects of section 1 which relate to making the administration of justice more efficient but will not support aspects which pertain to photo-radar. Subsection 5.1(1) is linked to photo-radar and requires people to attend in person or by agent at the court to file notice of intention to appear. People should be able to mail notice in. Mail is one form of delivery. I may withdraw this amendment if I'm satisfied with the other aspects of the bill.

The Acting Chair: What was your amendment to, section and subsection?

Mr Turnbull: It was section 1 of the bill, section 5.1 of the act.

The Acting Chair: I understood there was an amendment to subsection 1(3). Before proceeding with that, shall subsections 1(1) and (2) carry? Then we'll go to your amendment.

Mr Turnbull: I thought we were going to be voting as of 4 o'clock on this and we were going to be reading in the amendments.

The Acting Chair: I believe that is correct. We had stated that. The clerk wishes to respond.

Clerk of the Committee (Mr Franco Carrozza): Mr Turnbull, I'm not aware of what it is that you're trying to do. Are we in clause-by-clause now?

Mr Turnbull: No. We agreed this morning with the

parliamentary assistant that we would be reading in the various amendments we had; due to the fact that we are being forced to vote at 4 o'clock, we would then have these on the record. So all of those amendments would be read in by both the government and ourselves.

Clerk of the Committee: Mr Turnbull, there seems to be a misconception here. At 4 o'clock, we'll begin with the first clause and proceed. When it comes to your amendment, you will be permitted to place your amendment into the record; however, you will not be able to speak to it.

Mr Turnbull: Excuse me. If you read the motion that was made, you will find that we do not have the right to read our amendment into the record, as I read it. Indeed, we've had this type of motion before with, for example, Bill 121, and there is no further reading. It is deemed to be read into the record. That's specifically why I made the request this morning to the parliamentary assistant that we have an opportunity to read these into the record, because of the time limitation.

Mr Wessinger: Mr Chair, my understanding is that we had unanimously agreed that all the amendments would be read in and moved in their proper order, and then we would—

The Acting Chair: Do votes.

Mr Wessinger: Yes, proceed to votes at 4 o'clock, and that would save the reading in of the motions at 4 o'clock.

The Acting Chair: Thank you very much for your clarification.

Clerk of the Committee: As long as I know what I'm doing. Thank you.

The Acting Chair: Mr Turnbull, would you proceed?

Mr Turnbull: What do you want me to proceed with at this stage?

The Acting Chair: You have submitted a proposed amendment to subsection 1(3). I rule this amendment out of order because the proper procedure is to vote against the section. If the vote for inclusion is lost, the section and subsection will be removed.

Mr Grandmaitre: Is that all the explanation given to this, Mr Chair?

Clerk of the Committee: Yes. This has happened in other committees I've sat on. When you attempt to amend by removing, it's a matter of voting against the section. Mr Dadamo.

Mr Dadamo: I move that subsection 9.1(2) of the Provincial Offences Act, as set out in subsection 1(3) of the bill, be amended by inserting after "applies" in the first line "section 54 does not apply and".

The Acting Chair: Thank you. Amendment to subsection 1(4) of section 10.

Mr Dadamo: I move that section 10 of the Provincial Offences Act, as set out in subsection 1(4) of the bill, be struck out and the following substituted:

"Signature on notices

"10. A signature on an offence notice or notice of intention to appear purporting to be that of the defendant

is proof, in the absence of evidence to the contrary, that it is the signature of the defendant."

The Acting Chair: Mr Turnbull.

Mr Turnbull: This is under section 1 of the bill.

I move that the bill be amended by striking out subsection (6).

The explanation is the same technical reason as my first amendment. My interpretation is that the sole purpose is to establish the photo-radar project and relates to the pilot project designation re photo-radar.

The Acting Chair: I rule this amendment out of order because the proper procedure is to vote against the section, and if the vote for inclusion is lost, the section and subsection will be removed. Mr Dadamo.

Mr Dadamo: I move that subsection 18.4(2) of the Provincial Offences Act, as set out in subsection 1(18) of the bill, be amended by inserting after "applies" in the first line "section 54 does not apply and".

The Acting Chair: Thank you. Mr Turnbull.

Mr Turnbull: I move an amendment to section 2 of the bill.

I move that the bill be amended by striking out all clauses contained in section 2.

I would move this on the basis that I believe this is a tax grab.

The Acting Chair: I rule this amendment out of order because the proper procedure is to vote against the section. Mr Dadamo.

Mr Dadamo: I move that section 2 of the bill be amended by adding the following subsection:

"(4.1) Subsection 13(2) of the act is repealed and the following substituted:

"Numbers to be kept clean

"(2) The number plates shall be kept free from dirt and obstruction and shall be so affixed that the entire number plates including the numbers thereon may be plainly visible at all times, and the view thereof shall not be obscured or obstructed by spare tires, bumper bars, or by any part of the vehicle or any attachments thereto, or by the load carried."

The Acting Chair: I rule this amendment out of order because the amendment proposes to amend a subsection that is not contained in Bill 47. Therefore this amendment is beyond the scope of the bill.

Mr Dadamo: I move that subsection 13(3) of the Highway Traffic Act, as set out in subsection 2(5) of the bill, be amended by adding "entire number plates including the" after "the" at the end of the second line.

1530

The Acting Chair: Mr Turnbull.

Mr Turnbull: I move that subsection 205.5(1) of the Highway Traffic Act, as set out in subsection 2(9) of the bill, be amended by replacing "twenty-three days" in the third line with "forty-eight hours."

The explanation is that it makes the process of citations in 48 hours instead of 23 days after the occurrence. Quite clearly, 23 days is too long and the memory will be faulty. The notice will be deemed to be served seven days

after it is mailed; therefore, this is a reasonable period for the government to inform people in.

Mr Dadamo: I move that section 205.6 of the Highway Traffic Act, as set out in subsection 2(9) of the bill, be amended by inserting "photograph or a" after "A" in the first line.

The Acting Chair: Next amendment.

Mr Dadamo: I move that subsection 205.11(2) of the Highway Traffic Act, as set out in subsection 2(9) of the bill, be amended by inserting after "applies" in the first line "section 54 of the Provincial Offences Act does not apply and".

The Acting Chair: Next amendment.

Mr Dadamo: I move that subsection 207(6) of the Highway Traffic Act, as set out in subsection 2(11) of the bill, be amended by adding after "charged" in the second line "as an owner".

The Acting Chair: Next amendment.

Mr Dadamo: I move that subsection 207(7) of the Highway Traffic Act, as set out in subsection 2(11) of the bill, be amended by inserting after "imprisonment" in the fourth and fifth lines "a probation order under subsection 72(1) of the Provincial Offences Act".

Mr Turnbull: I move that subsection 207 of the Highway Traffic Act, as set out in subsection 2(11) of the bill, be amended by adding the following clause:

"Innocent Owner

"(8) If the owner of a motor vehicle upon being charged with an offence under section 128 swears under oath that he or she was not the driver of the motor vehicle on the date indicated on the offence notice and swears as to the identity of the driver, the charge against the owner will be null and void and an offence notice will be served on the offending driver pursuant to section 205.5 of the Highway Traffic Act."

This innocent-owner clause is vital to the car rental and leasing companies and is modelled on the Paradise Valley, Arizona, model, in which they prove it can work. The minister, upon questioning in the House, accepted that this area needed work and seemed to be open to discussion. A father who loans a vehicle to a son may choose to pay or have the conviction on his record, but the decision and control of the situation is in the hands of the non-offending owner.

The Acting Chair: Your next amendment, please.

Mr Turnbull: I move that the bill be amended by adding the following section:

"Dedication of funds

"2.1 All revenue generated by and through the implementation of this act shall be paid into the consolidated revenue fund and shall be appropriated by the Legislative Assembly and dedicated to the funding of road safety programs."

This challenge to the minister is that indeed this is not a revenue-generating bill. The minister has consistently suggested that it isn't, and in this way he can prove this.

The Acting Chair: I move this amendment out of order because it is contrary to standing order 56, which I quote:

"Any bill, resolution, motion or address, the passage of which would impose a tax or specifically direct the allocation of public funds, shall not be passed by the House unless recommended by a message from the Lieutenant Governor, and shall be proposed only by a minister of the crown."

Proceed.

Mr Turnbull: I move that the bill be amended by adding the following section:

"Review by legislative committee

"4.1(1) A standing committee of the Legislative Assembly shall, on or before the day that is eight months after the day on which this section comes into force, hold public hearings and undertake a comprehensive review of this act and the regulations, and shall make recommendations to the Legislative Assembly regarding amendments to this act and the regulations to this act.

"4.1(2) Three years after the day on which this section comes into force, this act and the regulations to this act shall stand referred to the same standing committee of the Legislative Assembly that held public hearings—no public hearings—"under subsection 4.1(1) for review of the following:

"(a) the effect of the implementation and administration of this act and regulations on the enhanced efficiency of the justice system, and the violation of individual privacy rights with respect to the use of photo-radar equipment;

"(b) statistics related to the number of speeding violations over the last decade, the number of crashes and fatalities over the last decade; and

"(c) the amount of revenue generated under the programs initiated by this act that was added to the consolidated revenue fund and the proportion of the funds used for the financing of road safety programs."

This is added to accomplish several things in the future, namely, full evaluation of the pilot project but also evaluation of the safety-versus-tax-grab argument. Several years down the road, should the government proceed with photo-radar after evaluation of the pilot project, it is important to review it, important to allow public hearings at some point in the life of this bill, and is consistent with the Conservatives' request that all bills passed by the Legislature should be subject to sunset review.

The Acting Chair: I rule this amendment out of order because the amendment proposes to amend a subsection that is not contained in Bill 47. Therefore, this amendment is beyond the scope of the bill.

What is your wish at this time? Do you wish to recess until 4 pm or proceed with the vote?

Mr Turnbull: I think in view of the fact that we have not been allowed any public hearings, we have been—

Interjection.

Mr Turnbull: Excuse me., I hear somebody from the other side of the floor complaining. This is a fact, that we have not been allowed any public hearings into this. This is a government which insisted in the last election that it was going to be different, it was going to be open. There has never been as much correspondence to my office as

we have on this. We haven't been allowed public hearings. Any further discussion with the government is totally irrelevant.

The Acting Chair: Mr Turnbull, would you address the Chair. What is your proposal?

Mr Turnbull: Therefore, Mr Speaker, I see no useful reason to sit here, and I suggest that we do recess until 4 o'clock and come back and vote on it, because the government is going to vote down everything; we know that.

The Acting Chair: Your proposal, then, is to recess.

Mr Turnbull: Yes.

The Acting Chair: Any other view or comment?

Mr Grandmaitre: We agree that we should recess until 4 o'clock.

The Acting Chair: Anyone else wish to speak? If not, this meeting is recessed until 4 pm.

The committee recessed from 1539 to 1600.

The Acting Chair: Members, ladies and gentlemen, could you take your chairs, please, so we can get started with the vote and complete the business of the committee that's before us. It was agreed that the vote on the bill would take place at 4 o'clock, and we'll commence.

Interjection: It wasn't agreed; it was ordered.

The Acting Chair: Ordered, thank you. It was ordered.

Section 1: Shall subsection 1(1) carry? Carried.

Shall subsection 1(2) carry? Carried.

Shall the amendment proposed by Mr Dadamo to subsection 1(3) carry? It's on page 2, being subsection 9.1(2). Shall the amendment carry? Carried.

Shall subsection 1(3), as amended, carry? All those in favour? Opposed? Carried.

Mr Dadamo has proposed an amendment to subsection 1(4). Shall the amendment carry? All in favour? Opposed? Carried.

Shall subsection 1(4), as amended, carry? Carried.

Shall subsection 1(5) carry? Carried.

Shall subsection 1(6) carry? Carried.

Shall subsection 1(7) carry? Carried.

Shall subsection 1(8) carry? Carried.

Shall subsection 1(9) carry? Carried.

Shall subsection 1(10) carry? Carried.

Shall subsection 1(11) carry? Carried.

Shall subsections 1(12) to 1(17) carry? Carried.

There's an amendment to subsection 1(18) proposed by Mr Dadamo. Shall the amendment carry? Carried.

Shall subsection 1(18), as amended, carry? Carried.

Shall subsections 1(19) to 1(28) carry? Carried.

Shall section 1, as amended, carry? All those in favour? Opposed? Carried.

Shall subsections 2(1) to (4) carry? Carried.

Subsection 2(5), an amendment by Mr Dadamo: Shall the amendment carry? Carried.

Shall subsection 2(5), as amended, carry? Carried.

Shall subsections 2(6) to (8) carry? Carried.

Subsection 2(9), an amendment proposed by Mr Turnbull: Shall the amendment carry? In favour? Opposed? The motion is lost.

Subsection 2(9), an amendment proposed by Mr Dadamo to section 205.6 and 205.11(2) of the act: Shall the amendment carry? Carried.

Shall subsection 2(9), as amended, carry? Carried.

Shall subsection 2(10) carry? Carried.

An amendment to subsection 2(11) by Mr Dadamo to subsection 207(6) of the act: Shall the amendment carry? Carried.

Shall the section, as amended, carry? All in favour? Opposed? Motion carried.

Subsection 2(11), an amendment proposed by Mr Dadamo to section 207(7): Shall the amendment carry? Carried.

Mr Turnbull's amendment proposed to subsection 2(11), to add a subsection 207(8) to the act: Shall the amendment carry? All in favour? Opposed? The motion is lost.

Shall subsection 2(11), as amended, carry? Carried.

Shall subsection 2(12) carry? Carried.

Shall section 2, as amended, carry? In favour? Opposed? Carried.

Shall subsections 3(1) to (6), carry? Carried.

Shall Bill 47, as amended, carry? In favour?

Mr Daigeler: Don't we have to approve section 3 first?

The Acting Chair: That included all of the subsections. I gave the subsections, but it included all of section 3.

Clerk of the Committee: After section 3, there's 4, 5 and 6. I made a mistake. My mistake; they're not approved.

The Acting Chair: Thank you. Can we delete the previous vote? Is that possible here?

Shall section 3 carry? All in favour? Opposed? Carried.

Shall sections 4, 5 and 6 carry? In favour? Opposed? Carried.

Shall Bill 47, as amended, carry? In favour? Opposed? Carried.

Shall Bill 47, as amended, be reported to the Legislature? In favour? Opposed? Carried.

What would you like to do now?

Mr David Johnson: We'll have public hearings now.

The Acting Chair: Thank you for your attendance. The committee stands adjourned until next Thursday.

The committee adjourned at 1612.

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STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair / Président: Brown, Michael A. (Algoma-Manitoulin L)

***Vice-Chair / Vice-Président:** Daigeler, Hans (Nepean L)

Arnott, Ted (Wellington PC)

*Dadamo, George (Windsor-Sandwich ND)

*Fletcher, Derek (Guelph ND)

*Grandmaître, Bernard (Ottawa East/-Est L)

*Johnson, David (Don Mills PC)

Mammoliti, George (Yorkview ND)

Morrow, Mark (Wentworth East/-Est ND)

Sorbara, Gregory S. (York Centre L)

*Wessinger, Paul (Simcoe Centre ND)

*White, Drummond (Durham Centre ND)

**In attendance / présents*

Substitutions present/ Membres remplaçants présents:

Cooper, Mike (Kitchener-Wilmot ND) for Mr Mammoliti

Eddy, Ron (Brant-Haldimand L) for Mr Brown

Mathysen, Irene (Middlesex ND) for Mr Morrow

Turnbull, David (York Mills PC) for Mr Arnott

Also taking part / Autres participants et participantes:

Brittan, Colin, director, integrated safety project, Ministry of the Solicitor General and Correctional Services

Mammoliti, George (Yorkview ND)

Ministry of Transportation:

Burns, Ross, legal counsel

Hughes, John, director, safety policy branch

Clerk / Greffier: Carrozza, Franco

Staff / Personnel: Yurkow, Russell, legislative counsel



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Third Session, 35th Parliament

Assemblée législative de l'Ontario

Troisième session, 35^e législature

Official Report of Debates (Hansard)

Thursday 9 December 1993

**Standing committee on
general government**

Environmental Bill of Rights, 1993

Chair: Michael A. Brown
Clerk: Franco Carrozza



Journal des débats (Hansard)

Jeudi 9 décembre 1993

**Comité permanent des
affaires gouvernementales**

Charte des droits
environnementaux de 1993

Président : Michael A. Brown
Greffier : Franco Carrozza



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LEGISLATIVE ASSEMBLY OF ONTARIO

G-649

STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday 9 December 1993

The committee met at 1011 in room 228.

ENVIRONMENTAL BILL OF RIGHTS, 1993

CHARTRE DES DROITS
ENVIRONNEMENTAUX DE 1993

Consideration of Bill 26, An Act respecting Environmental Rights in Ontario / Projet de loi 26, Loi concernant les droits environnementaux en Ontario.

The Chair (Mr Michael Brown): The standing committee on general government will come to order.

To recap previous episodes, on Thursday, November 18, we adjourned for the day, as Mr Tilson had requested some time to consider Mrs Mathysen's motion that the question now be put. All in favour of Mrs Mathysen's motion that the question now be put? Opposed? Carried.

Now we will deal with the question. As members will know, the motion is on the full section 2. Shall section 2 carry? All in favour? Carried.

We have section 2.1, which is a new section. Members have copies. Would someone like to make that motion? I need someone to make the motion.

Mr Wayne Lessard (Windsor-Walkerville): I'm asking for unanimous consent that this be stood down until later on. Apparently there are some discussions that are taking place as we're meeting right now with respect to this section.

The Chair: We haven't actually even made the motion. You'll have to make a motion and then ask for consent to stand it down.

Mr Lessard: All right. I move that part I of the bill be amended by adding the following section:

"Aboriginal rights

"2.1 Subject to the extent of provincial jurisdiction in relation to the government and territories of first nations and other aboriginal peoples, this act shall be interpreted and implemented to be consistent with the treaty and aboriginal rights recognized and affirmed by section 35 of the Constitution Act, 1982."

I'm now asking for unanimous consent that this amendment be stood down.

The Chair: Do we have agreement? Agreed. So we have stood down that section.

We will now deal with section 3. Are there questions, comments or amendments to section 3? Shall section 3 carry? Carried.

Section 4: Questions, comments or amendments? Shall section 4 carry? Carried.

Section 5: We have a Liberal motion.

Mr Steven Offer (Mississauga North): I move that section 5 of the bill be amended by adding the following subsection:

"Cost of registry

"(2) The cost of establishing and operating the registry shall not be imposed on a municipality within the mean-

ing of the Municipal Act."

The Chair: An explanation of your amendment?

Mr Offer: I think in the shortened hearings there was a concern brought forward that there is the possibility that the cost of establishing this new department was, firstly, uncertain, and I understand the uncertainty, but there was a secondary concern in that in establishing this new environmental registry and the commissioner and all that goes with it, there is the possibility of some cost being foisted upon a municipality.

Because we are dealing with a matter for which we do not know the cost involved in the implementation of this legislation, especially around the commissioner and the registration system, because we do not know the extent to which this will broaden out in terms of registration and commissioner, there is within our responsibility, and certainly our power, the opportunity to limit whatever costs there are, if not in terms of dollars, then certainly not to have those costs put upon municipalities across this province.

So the intent of the legislation is to say that if there are any costs in establishing and operating the registry, as there will be, and if we don't know what those costs are, and we don't know, and if those costs are going to become more and more each year, as we know they will, then under no circumstances will the cost of establishing and operating the registry be put upon a municipality in this province.

Mr George Mammoliti (Yorkview): I like that. That's good.

Mr David Johnson (Don Mills): Mr Chairman, as you probably are aware, we had a similar motion for this clause—

Mr Hans Daigeler (Nepean): Which is out of order now.

Mr David Johnson: —which may be out of order now, but certainly we would be supporting the Liberal motion in that regard, and if that fails, we'll be putting forward our own motion for the same reason.

I'm just looking at the brief from the Association of Municipalities of Ontario. Just reading briefly from their brief, it says:

"The issue of delegated authority also has implications for the operation of the registry. AMO recognizes the benefits of the environmental registry, which include providing a quick and comprehensive public notice of proposals and decisions that might affect the environment. However, the bill does not indicate whether the requirements that apply to ministries in relation to the cost of the operation of the registry would apply to municipalities that have delegated authority from the ministries. If the delegated authority is prescribed as an instrument (eg sewer, water under subdivision planning approvals, septic tanks approval), then the municipality or health board etc would have to participate in the registry.

This would introduce a number of financial implications. AMO does not support the downloading of the costs and the operation of the registry to municipalities."

That's a quote from their own brief. They're asking that "the bill explicitly state that all responsibilities for the cost and the operation of the environmental registry rest with the provincial government and not with authorities to which provincial responsibilities have been delegated." That's consistent with the motion that has been put forward.

I recall back earlier that one of the staff indicated there was some possibility that the registry would be available in libraries. I don't know what to make of that. It raises a little red flag in my mind that this may seem fine, but this may be another way of downloading the costs on to the library system. As we all know, the library system is largely funded through the municipalities.

1020

There may be a view that somehow this will be just tied in, with no costs whatsoever. Some people have the view that these things happen automatically without any cost to, for example in this case, the library board. But in my view, there would be quite an excellent chance that there would be a significant cost to the library to somehow organize this and have it as part of its system. If it's the view of the provincial government that it's not going to support this cost and the library has to eat the additional cost by itself, then the library will simply go to the local municipality and ask for the money there. So in a roundabout way, the municipalities will be picking up that cost too. I just want to have that noted.

From my perspective, this motion that's before us would imply that the provincial government would pick up costs associated with that sort of approach as well.

Mr Lessard: It's not the government's intention to download any of the costs of establishing and operating the registry on to municipalities. To back up that commitment, we don't have any objection to supporting this amendment.

The Chair: Further questions or comments? All in favour of Mr Offer's amendment to section 5? Carried.

Shall section 5, as amended, carry? Carried.

Section 6, Mr Lessard.

Mr Lessard: I move that section 6 of the bill be struck out and the following substituted:

"Purpose of registry

"6(1) The purpose of the registry is to provide a means of giving information about the environment to the public.

"Same

"(2) For the purposes of subsection (1), information about the environment includes, but is not limited to, information about,

"(a) proposals, decisions and events that could affect the environment;

"(b) actions brought under part VI; and

"(c) things done under this act."

This expands the purpose of the environmental registry

to allow general information pertaining to the Environmental Bill of Rights, the mandates of ministries, appellate body decisions and other information about the environment to be placed on the registry.

Mr David Johnson: I just wonder how the previous wording excluded the extra information that the parliamentary assistant is indicating will now be eligible to be included in the registry. It seemed as if the previous definition was somewhat all-inclusive. I'm just trying to determine the motivation between the change from what we had before to what we have here now.

Mr Lessard: There was one of the submissions that expressed concern about the accessibility of the public to the registry, and the availability of certain types of information on the registry as well. We felt this section would expand whatever restrictions on the definition might be perceived under section 6.

Mr David Johnson: Can the parliamentary assistant refresh me as to who it was specifically who made that deputation? Secondly, the original definition says that the registry is "to provide a means by which notice of proposals and decisions which might affect the environment can be given to the public." That seems to be rather all-inclusive. I'm not sure how that's restrictive.

Mr Lessard: It does refer to notices of proposals and decisions, and this refers to information about the environment. It seems to be more broad.

Mr David Johnson: Who was it who expressed the concern?

Mr Lessard: I'm just going to have to check that. Marsha Valiante, who is a professor from the University of Windsor, referred to that section.

Mr Offer: On section 6, it seems there are two additions to the amendment, that is, in (a) it speaks about "events that could affect the environment," and in (c) it talks about "things done under this act." I guess the question is, what do the words "events" and "things" mean? I think we are quite comfortable with the meaning of "proposals" and "decisions" and "actions," which are other things that are usually the subject matter of legislation, but what does it by mean by an "event" and what does it mean by a "thing"?

The reason I ask this is, is it a possibility that a member of the public could allege a contravention of the bill if an event anywhere in the province occurs, which could affect the environment, that isn't under the registry? It just seems that the wording "events that could affect the environment" is so broad that there is to my way of thinking an impossibility to have a registry incorporate and embrace any and all events in this province on a daily basis that might affect the environment.

Then the problem is, what happens when something does happen that could be argued as an event that affects the environment that isn't part of the registry, and a member of the public says, "There's been a breach of the intent under the legislation"? In short, I'm wondering whether that phrase is biting off way more than anyone can possibly hope to achieve.

Mr Lessard: There are provisions and procedures in

the act prescribing the type of information that needs to go on the registry, but I'm going to ask Mr Shaw to respond more fully to your question.

Mr Bob Shaw: Dealing with "things" first of all, "things" could be such items as a civil suit which has been brought under the bill.

Mr Offer: I'm not worried about that.

Mr Shaw: "Events": The intent here is not that the registry must record all events; it is to allow for information concerning events to be put to the registry. This could be for example outside the bill, something dealing with the Environmental Assessment Act, which is outside the bill and outside the definition currently provided for in section 6 of the bill.

Mr Offer: My concern is not so much about (c), although I brought it forward, "things done under this act." To me, when you say, "things done under this act," there are certain parameters which you've created. It's a thing that's done under the act. But when you talk about "events that could affect the environment," there are no parameters.

I understand the previous line that says information about events that could affect the environment, but I'm wondering whether we are now giving to the general public an expectation that there is on this registry information about events that could affect the environment.

The problem I see occurring is that the registry, no matter the best intentions, will not be able to have information in it about any event that affects the environment in this province. It is boundless. There are no parameters. I just wonder whether we then give to the public an expectation which is much too high, which is incapable of ever being achieved, and then setting in place some false expectation.

I won't belabour the point, but I do believe that what you are doing is putting in a foundation, an event, a series of words, and there is no government and no registry that can ever meet the expectations of those particular words. There are no parameters, and it is a boundless expectation that you are now giving the general public. My concern is, what happens when this is not met, as it will be? How many grains of sand on the beach? You just don't know.

1030

Mr Paul Wessenger (Simcoe Centre): I'd just like some clarification. It appears to me that this section sets out a purpose of a registry. It doesn't create any mandatory obligations. So in effect, the clause is an enabling clause and it permits the government to maintain a registry that would contain other environmental information, and I can see that as advantageous.

Certainly there might be some thing or some event that would be deemed of public interest to have on the registry, some information such as, and I don't know what they'd be under, the number of contaminated sites, for instance, that are out there on farm land. I don't know whether "proposals" and "decisions" cover that, but that type of information would be very useful for people who are buying land, if all the contaminated land sites that were known to the government were on the registry system.

I assume that would be something that might be, and I hope it would be, contained in the registry. In case I ever have to go back to practise law again, it would be a much more convenient way, to get a computer and get it punched in.

Mrs Irene Mathysen (Middlesex): If you take the argument one step further, obviously it's always going to be a challenge to provide complete information, but if people weren't prepared to meet that challenge, we would never have established libraries. So to say that because you may run into a challenge regarding the information, you shouldn't have it, it doesn't make a lot of sense. I think we have to do what we can, because it's important to make a beginning.

Mr Offer: Just on that point, does that mean that on the registry, you have to have the sale of every car that takes place and every running car in the province? Because that's an event that could affect the environment.

Mrs Mathysen: As Mr Wessenger pointed out, the whole point of this is enabling.

Mr Offer: On this?

Mrs Mathysen: This is enabling, so it's a beginning.

Mr Wessenger: It's not mandatory, it's enabling.

Mr David Johnson: I think it is somewhat material, though, as we get into this, to have a good idea of what is expected to be on this registry, not only in the beginning but in the final analysis. I don't know if the staff or anybody can give us any guidance in terms of what they expect to have on this registry. For example, the mining association is concerned. The mining association literally has hundreds if not thousands of permits and licences etc on a continual basis.

I'm looking down this end of the table, I suppose. I don't know where else to look for this answer. Will each and every one of these licences and permits have to be on the registry and continually updated?

Mr Shaw: The bill sets out what we need to put on the registry right now in terms of the types of notice of proposals etc. In addition to that, we have some ideas of information we'd like to put on the registry, such as general information concerning the bill, mandates of ministries, how to get further assistance in the use of the bill, but trying to crystal-ball five or 10 years from now and saying what would be put on the registry, I'm afraid we don't have a clear picture. I would like to clarify that what types of approvals or licences or instruments need to go on the registry will be defined by regulation, a specific regulation for each ministry which is required to do that.

Mr David Johnson: Can you advise me at the present time, and maybe you'll say you have to wait until the regulation comes out, but is it the intent that all of the various permits and licences etc, which the mining association indicates number in the hundreds if not in the thousands, that their members are associated with, be on the registry and will they all have to be updated on a regular basis? I assume many of them are annual or for various periods of time. Will they have to be continually updated?

Mr Shaw: I can only speak to what instruments the

Ministry of Environment and Energy intends to put on the registry. The Ministry of Northern Development and Mines and the Ministry of Natural Resources, this part of the act that affects instruments does not affect them until 1996, and therefore they will not be coming forth with their regulations until that time.

The three types of approvals that come to mind that potentially would be required by the mining industry are permits to take water, the possibility of an approval for operation of a waste disposal site and approvals for air emissions. Those are three that this ministry would issue, and those three instruments are prescribed for notice being placed on the registry. In the case of those three instruments, those do not have annual renewals or anything, so they go on the first time they are applied for.

Mr David Johnson: This registry would be centrally maintained, is that right?

Mr Shaw: This would be a government-wide registry, centrally maintained.

Mr David Johnson: So each of the ministries will be feeding the information that's required into some central input agency, I suppose, or into the Environmental Commissioner's office, I guess.

Mr Shaw: They'd be feeding it to a central entity that would make sure it goes on to the registry.

Mr David Johnson: At this point then, I gather you really don't know or are unwilling to speculate on the size of this registry, let's say at its maturity, maybe by the end of the decade for example. Does anybody have any speculation?

The reason I ask is because we're assured that there's only going to be a certain level of staffing associated with this, but obviously the staffing is dependent on the complexity, the size and the magnitude of the registry. If the registry is small, presumably a small number of staff will suffice, but if the registry grows to some of the suspicions, particularly when we see words like "events" and "things," and the mining association is worried about all its licences and permits, that sort of thing—I'm not even talking about the municipalities, all their planning proposals. For example, if you look at all the planning proposals across the province of Ontario that may come under Municipal Affairs when it comes on board, we could be talking about thousands and thousands of entries into this registry, in which case I assume that would take quite a contingent of people to update and maintain. The question is, has anybody got any estimate of what this thing is going to be like at maturity?

Mr Shaw: Based on the preliminary work that both our ministry and other ministries have done, the total number of proposals for instruments going to the registry per year at maturity, when all the ministries are on line, is estimated in the order of 10,000 per year.

Mr David Johnson: Ten thousand updates?

Mr Shaw: No, 10,000 new proposals per year. The proposal goes on the registry. Once the decision is made about the proposal, that goes on the registry, and then that is removed after a certain period of time, probably in the order of 60 days, because the registry is not intended to maintain a record ad infinitum of all decisions made.

1040

Mr David Johnson: The 60-day deletion might pertain to some permits that are time-dated, I would guess; that 60 days after the permits have been issued, it doesn't make much sense to have it on there. But certain planning procedures take place over a long period of time. Sixty days would barely scratch the surface of an official plan change, for example.

Mr Shaw: The concept is that when a ministry receives an application for an instrument, the notice goes to the registry and stays on the registry until a decision is made. For example, if somebody had applied for an approval for a waste disposal site and we had to give notice on the registry, we would put the notice that we have the application on the registry and then it would stay on the registry as it goes through the approvals process until such time as a decision is made. Then notice of that decision goes on, and then some time after that, everything will come off.

Mr David Johnson: That would be more than 60 days.

Mr Shaw: Yes, you're right. It would be on for a period of time while it goes through the decision-making process.

Mr David Johnson: You're talking about 10,000 new proposals each year and you're also talking about a number of proposals that, as you say, will take place over a period of time and will stay on. How many entries in total: new proposals and entries that have carried forward? Let's call this a database of some sort. How big a database would this be?

Mr Shaw: At any given time, it could probably be 50% higher than the total number of proposals, which would mean that if you have 10,000 spread out evenly over the year, you could have maybe 1,500 entries on the system at any given time.

Mr David Johnson: I think that's a little optimistic, but it depends on your interpretation. That implies quite an amount of activity, with 10,000 coming in, some items carrying over, items being deleted. What sort of staff number do you intend to manage this database?

Mr Shaw: Each ministry is responsible for its own entries and it's all being done electronically. If a ministry is putting notice of an application on, it creates the electronic file and it's moved by e-mail through to the central registry office. Their only job is to upload it, they don't have to do any entry or anything like that, so the central registry office will be very small: one, maybe two people.

Mr David Johnson: The work would be primarily out in the ministries.

Mr Shaw: It will be spread out among the 14 ministries, so you don't need to build a brand-new, centrally located office and staff it up with a large number of people.

Mr David Johnson: And I guess somebody's looked at that to see that it's workable. It's amazing to have so many people involved, with their fingers in the pie.

Mr Lessard: We do have a number of technical staff people who've been working on this for many months.

We had a briefing originally, but because of the shortness of time we were only able to scratch the surface as far as this part is concerned. If members would like further information at a later date, that is information that is available. In fact, the electronic bulletin board has already been established on a rough basis; people can call in now to have some idea of what the system will look like when it's up and running and how they may be able to access the information.

Mr David Johnson: I just one last question. Unfortunately, I was having another discussion I couldn't get away from when you were talking about the word "events." The word "events" has been indicated as being very broad. If there's an expectation in the public that "events" is broader than the 10,000 proposals that you anticipate coming in at maturity, that it includes activities or events that aren't included in that 10,000 and if there are complaints that people expect more on the database, then how is that dealt with? Where would those complaints come in? Would they come to the individual ministries or would they come to some central area? How would that happen?

Mr Shaw: In order to avoid confusion to the public about what is available at any given time on the registry, when you go on to the registry, there will be what I'll call a table of contents at the front end of the registry which tells people the type of information they may find on the registry, and it will be quite specific about what is on there.

If the public had a complaint that a certain type of information was not being placed on the registry and they thought it should be, then that complaint would be directed to the ministry responsible for that information.

Mr David Johnson: Then it would be up to the ministry to—

Mr Shaw: To discuss that with probably the Environmental Commissioner's office to determine whether it was feasible or realistic to place that additional information on the registry.

The Chair: Further questions or comments? Shall Mr Lessard's amendment to section 6 carry? Carried.

Shall section 6, as amended, carry? Carried.

Section 7: Questions, comments or amendments? Shall section 7 carry? Carried.

Questions, comments or amendments on section 8? Shall section 8 carry? Carried.

Questions, comments or amendments on sections 9, 10 and 11? Shall sections 9, 10 and 11 carry? Carried.

Sections 12, 13, 14, 15, 16, 17, 18 and 19: Are there questions or comments or amendments on these sections? Shall sections 12, 13, 14, 15, 16, 17, 18 and 19 carry? Carried.

Section 20.

Mr Lessard: I have an amendment to section 20.

I move that paragraph 4 of subsection 20(2) of the bill be struck out and the following substituted:

"4. Consider each provision identified in step 3 and identify and describe each type of proposal for an instrument about which an implementation decision could

be made under the provision that the minister considers should be classified as a class I, II or III type of proposal because of the potential for implementation decisions about proposals of that type to have a significant effect on the environment."

The Chair: And an explanation for that amendment.

Mr Lessard: Well, I thought that was pretty clear just the way it was amended. However, the original wording of this paragraph requires that if a type of proposal for an instrument could have a significant effect on the environment, then all proposals of that type are to be classified. The original wording requires types of proposals to be classified because of the exception rather than the usual case. This will result in the environmental registry being cluttered by proposals for instruments which were not environmentally significant. The original wording would thus require all applications for certain types of emissions, for example, from a restaurant to be classified, whereas the vast majority of them would not be environmentally significant. This amendment modifies the classification process to avoid this problem from occurring.

The Chair: Are there questions or comments?

Mr Daigeler: What is clearer here, the answer or the original amendment?

Mr David Johnson: This amendment actually restricts what will be put on the registry, I gather.

Mr Lessard: That's right.

Mr Daigeler: Good.

The Chair: Further questions or comments on Mr Lessard's amendment? Shall Mr Lessard's amendment to paragraph 4 of subsection 20(2) carry? Carried.

1050

Are there further questions, comments or amendments to section 20? Shall section 20, as amended, carry? Carried.

Sections 21, 22, 23, 24, 25 and 26: Do we have questions, comments or amendments on these sections?

Shall sections 21, 22, 23, 24, 25 and 26 carry? Carried. Section 27.

Mr Lessard: I move that paragraph 3 of subsection 27(2) of the bill be struck out and the following substituted:

"3. A statement of where and when members of the public may review written information about the proposal.

"3.1 An address to which members of the public may direct,

"i. written comments on the proposal, and

"ii. written questions about the rights of members of the public to participate in decision-making on the proposal."

The Chair: For clarity, an explanation?

Mr Lessard: This amendment ensures that notice on the registry indicates how anyone who is interested may obtain more details about the proposal, and this will assist people to formulate comments about it. The amendment also ensures that a person who may be interested in a

proposal is not misled into delaying the submission of comments by only submitting questions.

The Chair: Are there questions or comments regarding Mr Lessard's amendment? Shall Mr Lessard's amendment to subsection 27(2), paragraphs 3 and 3.1, carry? Carried.

Further questions or comments regarding section 27? Shall section 27, as amended, carry? Carried.

Sections 28, 29, 30 and 31: Are there questions, comments or amendments to sections 28, 29, 30 and 31? Shall sections 28, 29, 30 and 31 carry? Carried.

Section 32.

Mr David Johnson: I move that the bill be amended by striking out subsection 32(1) and substituting the following:

"Exception: Instruments in accordance with statutory decisions

"32(1) Section 22 does not apply where, in the minister's opinion, the issuance, amendment or revocation of an instrument would be a step towards implementing an undertaking or other project approved by,

"(a) a decision made under an act after affording an opportunity for public participation;

"(b) a decision made under the Environmental Assessment Act, part V of the Environmental Protection Act or the Ontario Water Resources Act."

A concern about this section was vehemently expressed by the Ontario Waste Management Association and the Association of Municipalities of Ontario. This amendment is forwarded to recognize existing public participation processes already established in instrument approval processes. It is imperative that potentially costly duplication is avoided and an efficient and effective approval process is maintained. My recollection is that the Ontario Waste Management Association, for example, already goes through a process with regard to its facilities, and I guess the Association of Municipalities of Ontario agreed that there would be duplication to impose another process on an already existing process, a process that already required public participation and a process that was dealing with environmental issues. Indeed, if a body went through those processes and successfully satisfied those processes, then it shouldn't be subject to another equivalent process in the form of duplication.

The Chair: Are there questions or comments regarding Mr Johnson's amendment?

Mr Lessard: I have a couple of concerns. One is with respect to clause (a), where the change in the wording involves the deletion of the phrase "by a tribunal." What this section is doing is actually exempting from the process certain types of decisions, and in the original section it would be decisions that have been made by a tribunal. By taking out that wording, it's actually broadening the exemption that's provided by the subsection, and that's not our intention in that subsection.

Clause (b) would also exempt instruments which follow upon instruments that have been made under the waste management part of the Environmental Protection Act or the Ontario Water Resources Act with no public

participation. The provisions in the bill are to exempt from the processes under the Environmental Bill of Rights decisions that have been made after an opportunity for some public input has been provided. This would exempt instruments that no public participation has been involved in, and we don't want to exempt those types of instruments. We want to make sure that there is an opportunity for public participation in cases where decisions have been made without that public participation.

Mr David Johnson: It certainly is the desire to broaden the exemptions. I'm not as familiar with the Ontario Water Resources Act, but certainly it was my understanding that under the Environmental Protection Act or under the Environmental Assessment Act public participation was mandatory. Indeed, in the kinds of decisions that are made in this day and age, there seems to be very healthy public participation. I think we're seeing that in Vaughan, Caledon and Pickering; at the present time we're seeing hundreds, if not thousands, of people who are involved.

I don't know if the government's intent here is to run various proposals through two sets of public hearings and two sets of public involvements. This is going to be a problem for those who have to go through a duplicate set of processes. The Ontario Waste Management Association is certainly one organization that thinks that's going to happen. I'm just trying to recall the specific instance that AMO saw as a problem here, but obviously AMO has also seen this as a problem.

I'm wondering what the government's proposal is. Is it simply that there would be two sets of processes now, that perhaps a recycling plant might be a case in point, they may go through environmental assessment and then again go through the provisions of this bill as a secondary process?

Mr Lessard: It's not the government's intention to have two separate sets of processes. I'm advised that under the Environmental Assessment Act there is a statutory provision for public participation, and that's not the same under the Environmental Protection Act or under the Ontario Water Resources Act. So the purpose of the Environmental Bill of Rights is, in the cases where decisions are made under those two acts without public participation, to permit public participation.

1100

Mr Offer: On the same point, under the EPA or under the Ontario Water Resources Act, though, there is the possibility that decisions are made without participation by the public. There is still a process that a proponent will have to have gone through.

Mr Lessard: There would be a process, yes. There wouldn't have been public notice, however.

Mr Offer: That's right. This is one issue that I've been trying to get some comfort with. Basically, a proponent would be making a proposal of some kind under the EPA or under the Ontario Water Resources Act, have gone through all of that and have received a positive decision. Then two individuals in the province being notified of this decision can have this matter brought forward under the Environmental Bill of Rights.

Is that the intent or the working of the EBR?

Mr Shaw: No, that is not the intent nor is that how the bill is structured to work. If a proponent filed application, and let's use the Ontario Water Resources Act, and if that was an approval that public notice must be given under the Environmental Bill of Rights, then at the time the ministry receives the application and before it starts into the process, the notice would be given under the Environmental Bill of Rights. So then the two processes, the notice process under the Environmental Bill of Rights and whatever the review issuance process is under the Ontario Water Resources Act, run parallel. It is not a matter of your doing one and then it gets turned around and sent back to do it again another way under the Environmental Bill of Rights.

Mr David Johnson: Can I just follow up on that? That sounds tempting, I suppose, but can we be assured that the timing is automatically the same? I'm not familiar with how long it takes the Ontario Waste Management Association or the Ontario Mining Association or whoever might need permits or licences or whatever that could involve the Ontario Water Resources Act, but it's my suspicion that under the Environmental Bill of Rights, notwithstanding that this bill says there is a time frame—how many months? Two months or something of that nature?

Mr Shaw: Thirty days.

Mr David Johnson: Depending on the number of complaints, this time frame could be extended. I only draw as a parallel that under the Planning Act, municipalities are supposed to respond within 30 days with regard to official plan amendments or zoning amendments or that sort of thing but it's regularly—well, that doesn't happen, at any rate. Any major appeal or any major amendment can take a year, and my guess is that the same thing is going to happen here: If there is any significant number of appeals under the Environmental Bill of Rights there could well be a backlog. Then you could have an industry, say the mining industry, which might comply with the water resources act and might meet all the requirements that the government has put forward but be denied a permit because the process that they're working through the Environmental Bill of Rights because two people have complained may be still going on. Can you tell us today that this won't happen?

Mr Shaw: The way you just described it, yes, I can tell you that will not happen. A proposal will come in to a ministry and a notice will go on to the registry while the proposal is being processed. Prior to the issuance of, let's say, an approval at the end of this process, two things must happen: One, that approval cannot be issued earlier than 30 days from the time the notice was put on the registry, and two, the public comments that were received on that proposal have to be taken into account in the decision.

The bill states what types of comments need to be taken into account. It says that comments on the regulatory framework surrounding the issuance of an instrument are not relevant comments and therefore do not need to be considered. Because somebody objects to something does not mean that the approval will not be issued.

The approvals are issued on the same basis as they are now. The Environmental Bill of Rights does not create any new criteria for the issuance of an approval. It just creates a process for public notification about an application.

Mr David Johnson: So what you're saying is that the permit would be granted even though the process through the Environmental Bill of Rights hasn't been completed.

Mr Shaw: No, the process through the Environmental Bill of Rights would be completed after 30 days' notice had been given to the public.

Mr David Johnson: All right.

Mr Shaw: If I could try to clarify it: You could give the public 30 days' notice, and if the applicant had fulfilled all of the requirements under the issuing legislation and the director was satisfied that all of those requirements had been fulfilled and the required notice had been given to the public and their comments had not changed the director's opinion that all requirements had been fulfilled under the issuing legislation, not under the Environmental Bill of Rights, then the approval would be granted.

Mr David Johnson: There's a basic assumption here, I think, through all this that this will be cleared in 30 days, and that's sort of the cornerstone of your—

Mr Shaw: You cannot clear earlier than 30 days. We unfortunately don't clear all our approvals in 30 days now.

Mr David Johnson: Okay. Maybe I'm missing the point here, but you're saying that the Environmental Bill of Rights complaints will be cleared or clarified within a specified period of time.

Just before you respond, I'm looking at the experience with planning procedures in Ontario, which greatly exceed the time frames. I'm looking at rent review procedures in Ontario. I don't know what the backlog there is but I constantly get people complaining to me about a huge backlog of complaints that were made a year or two ago. I'm looking at the case load in the Human Rights Commission and the backlog there. I'm not sure why this will be any different from those.

If it is and if there is a severe backlog, then my question is, notwithstanding the best efforts of the staff that are administering the processes of this bill, if they're just swamped with complaints, then is it not possible that some permit, for the waste management industry or the mining industry or the forest industry, could be held up, notwithstanding that they've complied with all other regulations—the Ontario Water Resources Act, the Environmental Protection Act, whatever acts govern them? They've met all those requirements but two people have complained, they're caught in the Environmental Bill of Rights process, there's a huge backlog of complaints in the environmental process and the staff just can't clear them out. It could be a six-month or a one-year backlog. Isn't that even remotely possible?

Mr Shaw: I don't believe there is. I believe that there is some confusion on two processes being mixed together here.

When you make an application for an approval, the

process is that the public is given a minimum of 30 days to comment on that—not to complain; to comment—or raise questions that they want responses to during that time period. The ministry or the issuing director, which is normally the case, is required to take into account those comments—not respond to those comments but to take into account those comments—if they're relevant, when he or she makes a decision about granting the approval.

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Now, the other process under the bill allows for any two citizens of the province to request a review of something that already has been issued. You can't ask for a review during the process to issue; you can only ask to review something which somebody inside the government has already approved or issued.

If, as an example, an application came in, notice was put on the registry, subsequently issued and somebody's not happy with it and they turn around and they ask for a review, the bill provides for basically a presupposed five-year immunity against that request for review, provided that the approval was issued in a manner consistent with the bill and no new evidence is brought forward to change the director's opinion.

Mr Offer: Just two short questions: It appears from your explanation that there are not two processes but rather two are really merged into one in terms of if somebody wishes to use the EBR with the Ontario Water Resources Act. If there is an application under the OWRA and somebody wishes to be part of that, they are not part of it by virtue of the OWRA but rather by virtue of the EBR. However, in the decision-making process in terms of granting or not, the desire of the proponent is still dictated by the OWRA. So in that respect, apart from now being part of the hearing, the individuals under the EBR do not get any new rights.

Mr Shaw: That is correct.

Mr Offer: The second thing is that if the decision goes against their wishes, they then can ask for a review of the decision under the EBR.

Mr Shaw: That is correct.

Mr Offer: Is there a provision in the legislation which basically stops an individual from asking for a review of a decision after they have already been part of the initial application? Do they basically get two kicks at the can?

Mr Shaw: Yes, they can still ask for the review, but the bill is quite clear on the types of grounds. It states right in it that the minister shall determine that it's not in the public interest to undertake a review if the decision is less than five years old.

Mr David Johnson: I think I understand better what's intended now, so it's been useful to me at any rate. But nevertheless, the comments are still here from the waste management association. They used the words "never-ending process." I think the mining association and the forestry association used very similar phraseology as well. Mr Offer's indicated they basically get two kicks at the can and I suspect that there are other kicks beyond that again. I think the minister has leeway to allow

further appeals, notwithstanding that five-year period when there aren't supposed to be more appeals.

I guess this is really saying that the staff involved with administering the Ontario Water Resources Act are essentially not doing their job when they're allowing a permit to be issued or when they give approval. So the public is being the watchdog here, which I think is maybe a sad commentary.

Mr Jim Wiseman (Durham West): Somebody better watch that government.

Mr David Johnson: The member for Durham East, I guess, will—

Mr Wiseman: West.

Mr David Johnson: —West, right, near the landfill site, will be a watchdog for sure.

Mr Wiseman: The one that's going to be owned by Metro.

The Chair: Just on a brief question of fact, is there any instance that you can think of that the EBR actually lengthens the time a permit would take to process?

I am most familiar with the forestry industry, thousands and thousands of permits and a lot of them really quite minor. A lot of them are important but there are a lot that are really quite minor, and some of those are processed very quickly because of their nature.

Are there any permits in this province, because of the EBR, that will be lengthened because of statutory time frames?

Mr Shaw: There is a possibility. For example, we as a ministry issue about 113,000 types of instruments a year. A lot of them are as described, mundane, very straightforward, and as a result they're not going on the registry.

On the instruments that we issue there is a possibility that non-complex approvals for a new air emission will take some additional days because of the 30-day comment period on them. For example, we have not put things such as our licences, septic tanks etc, which are normally turned around in days and are not environmentally significant under the definition of the bill, on to the registry.

Mr David Johnson: The other issue of course, and we're talking about 113,000 permits—I didn't realize there were that many—I think what the industry is saying is that it may be possible for them to defend this through this process. I guess they'd be quite confident because they will have had their permit in the first instance. It will have been given to them because they've complied with all the requirements of whatever act they're getting the permit under, but nevertheless two people could take them through this process again and then they'd have to defend themselves.

That in itself is a burden and an exercise, because as an industry you can't just sit back and say: "Well, we've complied with everything. We've met all the requirements so we really don't need to put much effort into defending the permit that we have legitimately obtained." They obviously would have to have legal counsel, they have to have staff associated with defending in this

process and that is a burden on them from a financial point of view and from a human resource point of view.

It's something that I think a number of industries are very concerned about. They have to be competitive in a global market. They can't afford to have staff unproductive. Just as around here we have to have everybody carrying their weight, their staff have to do the same thing. If they have staff, perhaps their operating staff as well as their legal staff, off defending against a multitude of these complaints, then from their point of view that's going to be very unproductive time and that's going to put a burden on the industries.

I think that's a point that perhaps we're forgetting here. That's one of these things that comes up when you talk about red tape and the cost of doing business in the province of Ontario. That's just another straw on the camel's back. I think that needs to be said.

Mr Lessard: I just wanted to respond to that. I understand your concern. I don't necessarily agree with it. However, the amendment that you've proposed to this section really doesn't address the comments that you've made.

You're talking about part IV, the application for review process, to which this amendment is not really connected. Those points may be better made when we're discussing those sections, but they don't apply with respect to the amendment that you've put forward here.

Mr David Johnson: We're talking in a general sense to some degree here too.

Mr Lessard: All right.

Mr Offer: Just one final question: Of the 113,000 proposals, are they all going to be found on the registry?

Mr Shaw: No.

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Mr Offer: Isn't that a breach of section 6?

Mr Shaw: No.

Mr Offer: Why?

Mr Wiseman: This debate's getting quicker.

Mr Lessard: We're going back to debate section 6 again.

Mr Offer: No, no. I think there's an expectation by the general public that at least any proposal before the ministry could find its way onto this much-ballyhooed registry. I had a concern earlier on about "events" because I thought it was too broad, but certainly I would think the general public, at the very minimum, expects that the purpose of the registry is to contain information that carries with it any proposal pending. How else do they know?

Mr David Johnson: Isn't a more complete answer that yes, they all could be on, but it's not the intent or it's not the staff's view that it's the intent of the various ministries to put them all on?

Mr Lessard: It's not a necessity to put them on. It isn't a requirement.

Mr David Johnson: It's not a necessity, but in actual fact the ministries could choose to put all 113,000 on. There's nothing that precludes this under the act. The

public could demand it of their elected representatives and of various staff, and indeed the final analysis could be that you could have all 113,000 on.

Mr Lessard: Under section 19 and what follows, classifying proposals for instruments, that's where the definition of instruments that need to be placed on the registry is contained. Why a ministry might want to put on every mundane approval I don't know. I can't understand why they might want to do that.

Mr David Johnson: Because the public might demand it, or certain people in the public might demand it.

The Chair: Further questions and comments regarding Mr Johnson's amendment, subsection 32(1)? Shall Mr Johnson's amendment to subsection 32(1) carry? All in favour? Opposed? Mr Johnson's amendment is lost.

Questions, comments or amendments to section 32? Shall section 32 carry? Carried.

Section 33 and section 34: Do we have questions, comments or amendments to those sections? Shall section 33 and section 34 carry? Carried.

Section 35. Mr Johnson.

Mr David Johnson: I move that subsection 35(2) of the bill be amended by striking out "subsection (1)" in the first line and substituting "this section."

Mr Chair, anticipating your desire, we are moving the deletion of subsection (1) in this section to allow the following amendment on subsection 35(3) to proceed. Perhaps I should indicate what that is. Should I do that at the same time?

The Chair: I think we should deal with them one at a time, but you can bring your explanation.

Mr David Johnson: Subsection 35(3) was brought forward by Laidlaw, among others. The bill, as it is presently worded, does not provide any provision for the minister to provide public comments to the proponent of any given instrument. Since the ministry will be making a major decision with respect to public comments and related information, the proponent should be granted the right to receive and respond to these submissions. Laidlaw, among others, felt it should have this information as any decision made could affect its business.

The Chair: Further questions or comments regarding Mr Johnson's amendment to 35(2)?

Mr Lessard: For the first amendment, he's just talking about removing subsection (1). I don't know what, legally, the effect of that might be, but the practical effect is that it obscures the clarity of the provision by not immediately directing the reader's attention to the provision affected by the subsection.

Mr David Johnson: So I gather the parliamentary assistant supports the amendment?

Mr Wiseman: That would be one interpretation.

The Chair: Further questions or comments? Shall Mr Johnson's amendment to subsection 35(2) carry? The amendment's lost.

Mr Johnson.

Mr David Johnson: This is subsection 35(3). I move

that section 35 of the bill be amended by adding the following subsection:

"Proponent's response

"(3) A minister who gives notice of a proposal for an instrument under section 22 shall take every reasonable step to ensure that the proponent, if any, of the proposal, has an opportunity, before a decision about the proposal is made in the ministry, to,

"(a) review all comments relevant to the proposal that are received as part of the public participation process described in the notice of the proposal; and

"(b) submit a response to the comments in the manner specified by the minister."

This is in line with the explanation I gave previously that the bill, as it is presently worded, does not provide any provision for the minister to provide public comments to the proponent of any given instrument. As the ministry will be making a major decision with respect to the public comments and related information, the proponent should be granted the right to receive and respond to these submissions.

Representatives who were before us expressed the concern that a complaint is being made and information is being given to the ministry which could affect a permit or a licence or an approval for a given proponent, and that the proponent would not have the ability (a) to be aware of what is being said and (b) to respond and give the minister information that might assist the minister in making a decision. That would seem to be a fairly basic right, frankly, if somebody's business or approval is potentially being affected.

Mr Lessard: I would think that if you had the opportunity to respond to a comment, that may have the effect of actually lengthening the time before a decision would be made as well. It could have that effect. But the purpose of the section is to ensure that the public's comments are taken into consideration by the ministry when the decision is being made. The intention here is that if the ministry requires further information from the proponent, it would seek that information on an as-necessary basis in making the decision.

Mr David Johnson: That may be the intent, but if you or I were in business out there in the real world, intentions are not something we can bank on. If that's the intent, then I would suggest that the parliamentary assistant would not have any objection to having it written in, even beyond the intent, that it was a requirement that the business have the right to provide that information.

Again, I think the business community is not concerned about lengthening the process in that regard, because it would be their view that if they gave relevant information, that would more than likely shorten the process because the minister would be able to make a quicker decision based on good information. I think the concern here is that decisions may be made based on information from a complaint that may be inaccurate information, and the proponents could provide information that would be of assistance, would be perhaps more accurate, to the minister.

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Mr Mammoliti: The Conservative House leader is on the phone.

Mr David Johnson: Say hello.

The Chair: Continue, Mr Johnson.

Mr David Johnson: I think I just made the point. When we're doing these bills, we should be a little cautious about what the intent is, because intent is something that can change from day to day but what's written in a bill is something you can count on.

Mr Lessard: The intent is to give the public an opportunity to provide comment with respect to the decisions that are being made by the ministry, where they don't have that now.

Mr David Johnson: That's clear, and the bill formalizes that process, but what it doesn't allow is for businesses to provide information about the complaint that the public is making, which may be accurate, but may not be accurate. If the minister is formulating any sort of decision on this information, then it may be a one-sided decision.

Mr Lessard: They wouldn't be complaints. They'd be comments or questions, and if these questions required answers from the proponents, the ministry would contact them for the answers.

Mr David Johnson: "Complaint" is a generic word. Any way you cut it, even if you call it questions or comments, they're intended as a complaint, I'm sure, because that's the nature of the whole process. It's a complaint type of process.

Mr Lessard: The decision-making process, I would think, would require any information that was going to be used as a basis for making a decision to be verified. That would just be the prudent course of action.

Mr David Johnson: Well, I've made my point, Mr Chairman.

The Chair: Mr Offer, then Mr Wessinger.

Mr Offer: No, I have no statements or questions.

Mr Wessinger: I'd just like to make the comment that I think this clause, if added to the bill, would be very problematic. In other words, we're legislating in more administrative steps, and the more administrative steps you put into the process, the more bureaucratic and slow the whole process is. I think we want to limit the number of rigidities put into the system. We obviously don't want further delays, and for that reason I don't think it's a good amendment.

The Chair: Further questions or comments regarding Mr Johnson's amendment to subsection 35(3)? Shall Mr Johnson's amendment to subsection 35(3) carry? All in favour? Opposed? The amendment's lost.

Further questions and comments to section 35? Shall section 35 carry? Carried.

Sections 36 and 37: Do we have questions and comments or amendments? Shall sections 36 and 37 carry? Carried.

Section 38; Mr Lessard.

Mr Lessard: I move that paragraph 2 of subsection

38(1) of the bill be struck out and that the following be substituted:

"2. Another person has a right under another act to appeal from a decision whether or not to implement the proposal."

The Chair: An explanation?

Mr Lessard: Yes. This amendment simplifies the wording to make it easier to understand. It doesn't change the original meaning of the section, but there was confusion with respect to the interpretation that had been presented by one of the groups, I think AMO.

Mr David Johnson: It's really replacing the words "a person directly affected by a decision has a right to appeal" with "another person has a right...to appeal." It seems to me that it broadens who has the right to appeal. The original wording indicated that it would have to be a person directly affected by the decision.

Mr Lessard: The concern was that the same person may appeal, rather than it being the requirement that it be another person. The same person can't continually appeal. It would have to be someone else, other than the original appellant.

Mr David Johnson: If the parliamentary assistant says that's what it does, then I'll have to believe him, but it doesn't appear that that's what means.

Mr Lessard: That was their concern, that once an appeal was lost, the same person could appeal once again and that it would be a constant appeal process.

Mr David Johnson: I'm just not sure how this accomplishes that.

Mr Offer: But on the appeal side, if there is a group of people, each person has the right to appeal—although it wouldn't serve any purpose. As I was asking the question, I was also giving myself the answer, so you can withdraw the comment.

Mr Wiseman: It was rhetorical.

Mr Offer: No, it wasn't. It was a good question. I just had the answer to it.

The Chair: Further questions or comments on Mr Lessard's amendment to paragraph 38(1)2?

All in favour of Mr Lessard's amendment to paragraph 38(1)2? Carried.

Mr Lessard: I move that section 38 of the bill be amended by adding the following subsection:

"(1.1) For greater certainty, subsection (1) does not permit any person to seek leave to appeal from a decision about a proposal to which section 22 does not apply because of the application of section 29, 30, 32 or 33."

Mr Offer: That simplifies it, doesn't it?

Mr Lessard: It did say "for greater certainty."

Mr Offer: Dealing with subsection 38(1.1), "For greater certainty, subsection (1) does not permit any person to seek leave to appeal from a decision about a proposal to which section 22 does not apply because of the application of section 29, 30, 32 or 33," is there anyone in the province who actually would fall within this section? Or would know?

The Chair: Further questions or comments? Shall Mr

Lessard's amendment to 38(1.1) carry? Carried.

Are there further questions or comments to section 38?

Mr David Johnson: I have one to subsection 38(5).

I move that section 38 of the bill be amended by adding the following subsection:

"Standing

"(5) A resident of Ontario who meets the requirements of this section is granted standing in an existing appeal procedure."

The note I have on that is that AMO recommends that sections 38 through 48, which refer to appeals of decisions on class I and class II instrument proposals, and in particular section 39 on appellate body, should be amended to clearly indicate that there will be no new rights of appeal under the Environmental Bill of Rights and therefore no new processes.

This amendment states that a resident of Ontario who meets the requirements of section 38 is granted standing in an existing appeal procedure. It appears the purpose of section 38 is to provide more residents of Ontario with access to the appeal processes relating to class I or class II instruments.

However, the bill seems to create some confusion—that's got to be an understatement—as to the designation and role of the appropriate appellate body.

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Mr Wiseman: Did you want that as part of your amendment? It was probably recorded in Hansard the way you said it.

Mr Lessard: The purpose of section 38 is to provide an ability to decide who would be granted the right to appeal, and by this subsection 5, it would state that anybody who meets the requirements of that section be automatically granted that standing. It would actually remove the right of the court to be able to make that decision. It would mean that any person who has an interest in a decision would have the right to appeal automatically, and that would really introduce an unacceptable level of uncertainty into the government's approval process. I'm not sure the explanation you gave matches the impact of the amendment.

The Chair: Further questions or comments regarding Mr Johnson's amendment? Shall Mr Johnson's amendment to subsection 38(5) carry? All in favour? Opposed? The amendment is lost.

Further questions, comments or amendments to section 38? Shall section 38, as amended, carry? Carried.

Questions, comments or amendments regarding sections 39, 40, 41, 42, 43, 44, 45 and 46? Shall sections 39, 40, 41, 42, 43, 44, 45 and 46 carry? Carried.

Section 47, Mr Lessard.

Mr Lessard: I move that subsection 47(1) of the bill be struck out and the following substituted:

"Public notice of appeals under other acts

"(1) A person who exercises a right under another act to appeal from or to seek leave to appeal from a decision whether or not to implement a proposal for a class I or II instrument of which notice is required to be given under

section 22 shall give notice to the public in the registry of the appeal or application for leave to appeal."

This is to simplify the language. I know it's difficult to understand that when you just consider it out of context; however, it does parallel the language that's used under subsection 38(1.1).

Mr Offer: That's for sure.

The Chair: Questions or comments? Shall Mr Lessard's amendment to subsection 47(1) carry? Carried.

Mr Lessard: I move that subsection 47(2) of the bill be struck out and the following substituted:

"Same

"(2) For greater certainty, subsection (1) does not require any person to give notice to the public of an application or appeal respecting a proposal to which section 22 does not apply because of the application of section 29, 30, 32 or 33.

"Delivery of notice

"(2.1) The notice required by subsection (1) shall be given by delivering it to the Environmental Commissioner, who shall promptly place it on the registry."

That also parallels the changes that were made in wording to subsection 38(1.1).

The Chair: Shall Mr Lessard's amendment to subsection 47(2) carry? Carried.

We have a government amendment to subsection 47(5).

Mr Lessard: I move that subsection 47(5) of the bill be amended by adding after "notice is given" in the fourth line "to the public in the registry."

This amendment eliminates any confusion over whether the date of the notice is the date the notice is given to the Environmental Commissioner or the date the Environmental Commissioner places it on the registry. It was intended that the 15-day time period commence when the notice was actually placed on the registry.

The Chair: Shall the amendment to section 47(5) carry? Carried.

Are there questions or comments on section 47? Shall section 47, as amended, carry? Carried.

Questions, comments or amendments to section 48? Shall section 48 carry? Carried.

Section 49.

Mr Lessard: I move that subsection 49(5) of the bill be struck out and the following substituted:

"Nature of employment

"(5) The Environmental Commissioner shall not do any work or hold any office that interferes with the performance of his or her duties as commissioner."

The original section stated that the commissioner shall not hold any other employment. It was determined that this might exclude certain candidates from the position. This amendment substitutes the standard that applies to public servants generally. So an Environmental Commissioner, for example, wouldn't be prevented from doing such things as continuing to teach a university course or writing articles or participating in a public interest group, provided that work doesn't interfere with the work being done as the Environmental Commissioner.

Mr David Johnson: The parliamentary assistant may have answered my question, but is this the same phraseology that applies to deputy ministers, for example?

Mr Shaw: Yes, it is.

Mr David Johnson: This would then allow the Environmental Commissioner to have other employment. You mentioned teaching at a university, but it could be a lawyer. It could be a broad range of employment opportunities. Who defines if the other employment opportunities interfere with the duties?

Mr Lessard: The Environmental Commissioner is an officer of the Legislature, so it would be the Legislature that could decide.

Mr David Johnson: How does that work then? You say the Legislature. Presumably, it would be a cabinet decision then. Is that how that works?

Mr Lessard: I think persons such as the Ombudsman or the commissioner on election finances may be similar types of positions. I'm not sure. I see Mr Jackson nodding his head back there. He may have some further knowledge about this.

Mr David Johnson: So essentially, it would have to be raised in the Legislature by a member that the Environmental Commissioner is pursuing other duties that are onerous and impacting on the performance, and fuss would have to be made and something would come from there. But again, it would have to go through the cabinet, because the Legislature by itself doesn't really have that much authority.

Mr Wessinger: We have a committee of the Legislative Assembly to which several officers of the assembly do report. So it would probably be through that committee, unless the Legislature decided to arrange it to report to another committee, but through a standing committee of the Legislature would be the way the commissioner would report.

Mr Offer: I'm a little concerned about this amendment, to be very frank with you. I had always thought the Environmental Commissioner would in essence be a full-time position, and the duties put upon the commissioner were going to be significant, substantial and onerous and would not permit, in terms of his or her duties, the holding of a second and/or third job. Also, in principle, do we want the Environmental Commissioner of the province of Ontario to be writing articles or other matters outside of his employment? It might have the impact, in terms of the general public, of introducing a certain bias of the commissioner.

1150

That will happen if the person is allowed to do it. He or she will very innocently write an article. It will probably be a person who is extremely qualified, and all of a sudden there is this article that appears somewhere by the Environmental Commissioner, written in his capacity as another, and there will be a big to-do about it, that this is a tilt by the commissioner.

I just think, as an employee of the Legislative Assembly, why do we want to even get into that? Why wouldn't we want to have somebody who wants to stand as the Environmental Commissioner for a five-year term? This

is the amount. They're part of the public service pension plan and this is the commitment, a minimum of five years, totally, fully obligated to maintaining this particular piece of legislation.

Why would we create in a section, by amendment, a problem which we know is going to happen and will most likely occur very innocently? It will impeach the whole integrity of the legislation and do so in an incredibly innocent fashion. I think people want their Environmental Commissioner full-time. I don't understand why you'd want to create more problems.

I'm opposed. I state my opposition to this amendment very strenuously. I believe the Environmental Commissioner should not be involved in any other form of work, because of the duties that are going to be put on that person. The whole integrity of the legislation is going to rest on that person's shoulders, and we know that. The integrity of this legislation is not going to be on what is or is not in a registry located in some library somewhere; it's going to focus and manifest itself on the individual called the Environmental Commissioner.

Mr David Johnson: Is there any response from the government? I think Mr Offer is putting forward excellent logic. This is a position that needs to have all the appearances of being fair and beyond other influences. The possibility arises that if this person does have some form of employment, there could be the appearance of some influence. I don't know. It would depend on the kind of employment, I suppose, but you're opening the door to that. This is surely one of the most important, most visible positions this government will create and I would think you would want it pure.

Mr Lessard: It is a full-time position, but it doesn't mean that a person's working at it 24 hours a day. The purpose of the amendment was to bring it more in line with the restrictions that are placed upon public servants generally. However, Mr Shaw has some further explanation about other examples of employees of the Legislature and of other public servants.

Mr Shaw: In checking the statutes, we determined that in fact there is no stated restriction in the actual statute on the Provincial Auditor, the Human Rights Commissioner, the fire marshal or the chief medical officer of health for the province.

Mr Offer: There's no statement, but there's nothing that also states that they can hold something. It's left silent.

Mr David Johnson: In other words, would there be such a clause as this that pertains to the Human Rights Commissioner, for example?

Mr Shaw: No. There's no clause such as this in the statute that pertains to the Human Rights Commissioner.

Mr David Johnson: Why is such a clause being introduced here? One could imply that if there is no clause pertaining to the Human Rights Commissioner, the expectation is that would be a full-time job, not only from the point of view of perhaps the workload but from the point of view of the perception that the Human Rights Commissioner, the Environmental Commissioner, must be seen to be pure and aboveboard, unbiased, as well as

actually being so. If they're involved in some other form of employment, there is always the potential that this other form of employment could come into conflict with the duties of the Human Rights Commissioner or the duties of the Environmental Commissioner. That's the kind of office that needs to be beyond that somehow.

Mr Offer: In the committee that Mr Wessinger has alluded to, it would be improper for a member of that committee to ask an applicant to the position whether it is going to be a full-time position, because it would be outside of the legislation. You could not say, "Are you going to do this full-time?" The person will say, "I will abide by the legislation." It would be wrong and totally improper to ask somebody to do something in a position which the legislation does not ask. If this weren't there, then you could ask the person, "Will this be full-time?" Then you could do it. This section precludes that question, because you are asking somebody to do something that the legislation particularly says is not necessary. I think it's a rotten amendment.

Mr Lessard: It is a full-time job.

Mr Offer: A full-time job is when there is no other thing that the person will do, because he's doing it full-time. Here it says that this person can do his job and do something else.

Interjection: Where does it say that?

Mr Offer: That's the amendment. Don't shake your head. That's the amendment.

The Chair: Further questions or comments? Shall Mr Lessard's amendment to subsection 49(5) carry? Carried.

Further questions or comments on section 49? Shall section 49, as amended, carry? Carried.

Questions, comments or amendments to sections 50, 51, 52, 53, 54, 55 and 56? Shall sections 50 through 56, inclusive, carry? Carried.

At this point, I think it would be a good time to adjourn the committee for the morning, and we'll see everyone at 3:30.

Mr Mammoliti: Mr Chair, as you know, there's a subcommittee meeting at 12 o'clock. We agreed to that yesterday.

The Chair: Yes.

Mr Mammoliti: Just as a clarification, because of the lack of time, in terms of the subcommittee's decision with regard to talking about this this afternoon, can the committee can give the subcommittee—I'm not sure whether the subcommittee already has it, but that's another question I pose—the ability to make the decision for the committee?

The Chair: No.

Mr Mammoliti: We'd have to come back this afternoon.

The Chair: The process will be that the subcommittee will make a report to the committee. The committee can adopt that report or choose to do something different.

Mr Mammoliti: When will the report be given to the committee?

The Chair: Motions are always in order.

Mr Mammoliti: This afternoon? Yes, okay. That's fine.

The Chair: The committee's adjourned until 3:30.

The committee recessed from 1159 to 1534.

The Chair: The standing committee on general government will come to order. Mr Mammoliti.

Mr Mammoliti: I move acceptance of the subcommittee report in front of us.

The Chair: And what might that be?

Mr Mammoliti: That the committee request of the three House leaders that we meet during the recess to review for one week Bill 95, An Act to provide for the passing of vital services by-laws by the City of North York, George Mammoliti, MPP.

The Chair: Is there discussion of that? I believe the subcommittee agreed to that this morning. All in favour? Carried.

When we left this morning, we were busily considering the Environmental Bill of Rights in clause-by-clause, and we had got to section 57. I believe we have a Liberal amendment.

Mr Offer: I move that section 57 of the bill be amended by adding the following clauses:

"(c.1) provide educational programs about this act to the public;

"(c.2) provide advice and assistance to members of the public who wish to participate in decision-making about a proposal as provided in this act."

The Chair: Thank you, Mr Offer. I would think you have an explanation.

Mr Offer: Yes, I do. Basically, this amendment is trying to add a few more functions to the position of the Environmental Commissioner in an area where we think it is important, such as educational programs about what this act is and how the public can interrelate with it, and also advice and assistance for people who wish to be part of the particular legislation.

The Chair: Further questions or comments on Mr Offer's amendment to section 57?

Mr Lessard: It's our position, of course, that these functions, even though not specifically stated in the bill, would be implied as part of the Environmental Commissioner's duties. However, I should point out that there's the possibility, if this amendment becomes part of the bill—and we don't really have any objection to it—that it could increase the cost of administering the bill and the office of the Environmental Commissioner.

The Chair: Further questions or comments to Mr Offer's amendment? Shall Mr Offer's amendment to section 57 carry? Carried.

We have a government amendment.

Mr Lessard: I move that section 57 of the bill be amended by adding the following clause:

"(e.1) review recourse to the rights provided in sections 38 to 47;"

That also expands the duties of the Environmental Commissioner; specifically, it would ensure that the commissioner, as part of his duties, review the use of

third-party appeal rights. The amendment makes the list of components of the bill in section 57 that the Environmental Commissioner is to review complete. Section 59 permits the assembly to require the Environmental Commissioner to do additional things as well.

The Chair: Further questions or comments on Mr Lessard's amendment? Shall Mr Lessard's amendment to clause 57(e.1) carry? Carried.

Further questions or comments or amendments to section 57? Shall section 57, as amended, carry? Carried. 1540

Section 58: questions, comments, amendments.

Mr Offer: I have an amendment to 58(2)(b).

I move that clause 58(2)(b) of the bill be amended by adding at the end "including a summary of information about compliance with ministry statements of environmental values gathered as a result of the review carried out under clause 57(a)."

The Chair: And the explanation would be?

Mr Offer: What I'd like to do is make this amendment so that there is more information provided by the Environmental Commissioner about any decisions he or she may make, the summary of information. It just gives the public more information about any decisions made by the Environmental Commissioner.

I understand that there's some concern about some of the wording here.

Mr Wiseman: I was just going to move an amendment to your amendment.

Mr Offer: Okay. Basically, the premise of the amendment is that if the commissioner comes out with some recommendation, they also add the reason; some further background information about the decisions they make.

Mr Wiseman: I would like to make an amendment to Mr Offer's amendment.

I would move that after the word "including," "for greater certainty," be included and that the rest of the amendment remain the same.

The Chair: Are there questions or comments regarding Mr Wiseman's amendment to Mr Offer's amendment?

Mr David Johnson: Can I just ask what Mr Wiseman's amendment means: "including, for greater certainty"? Greater certainty about what? I assume there wouldn't be less certainty.

Mr Wiseman: The amendment "for greater certainty" will allow for that amendment to be focused and not to exclude or to include other aspects of the bill. If you want even a further explanation, I think somebody else can handle it.

Mr Lessard: I was afraid he was going to say the parliamentary assistant.

The Chair: Further questions or comments?

Mr Offer: I'll be very brief. Really, what we're talking about is that 58(2)(b) is the Environmental Commissioner reporting annually to the Speaker and providing a summary of the information gathered by the

commissioner as a result of performing his or her functions under the bill, section 57.

We want to just say that in that particular summary the commissioner can provide a summary of information about compliance with those ministry statements of values. I think the amendment is saying that it should also contain the caveat that it should be done for greater certainty, basically.

What we're trying to do is that when the commissioner at the end of the year says, "This is what has happened," there is something more to it, if that will clarify matters: what has happened; have they complied with the statement of values; where they didn't. It provides a fuller type of report to the general public and to the Legislative Assembly.

Mr Lessard: I just wanted to indicate there is a possibility that interpreting the section as amended would actually limit the type of information that the commissioner may include in his report. Rather than considering generally this section to be only a summary of the information gathered, it could be interpreted that it should only include a summary of information about compliance with ministry statements of environmental values and not any other things. There's a possibility that it could be interpreted narrowly by the commissioner when he's preparing his or her report, so it's something that could cut both ways.

The Chair: Further discussion? Shall Mr Wiseman's amendment to Mr Offer's amendment carry? Carried.

Now we're dealing with Mr Offer's amendment as amended by Mr Wiseman. Further discussion to that amendment. Shall Mr Offer's amendment, as amended, carry? Carried.

Further questions, comments or amendments to section 58? Shall section 58, as amended, carry? Carried.

Section 59: Questions, comments or amendments to section 59? Shall section 59 carry? Carried.

Section 60: The government has an amendment.

Mr Lessard: I move that section 60 of the bill be amended by adding the following subsection:

"Delegation

"(3) The Environmental Commissioner may authorize in writing any person or group of persons to exercise the commissioner's powers under this section."

The explanation for that amendment is that it enables the Environmental Commissioner to have the appropriate person or persons in his or her office carry out the examination and require the production of documents referred to in this section.

If it weren't for this delegation of authority, the functions would be limited to the commissioner and that might limit the effectiveness of his or her office. Section 60 talks about the sorts of things that the commissioner can do; for example, examining persons under oath, requiring the production of evidence or documents or other things. If the commissioner didn't have the power to delegate responsibility for doing some of those things, it may limit his ability to carry out his function.

Mr Offer: Is there any limitation to the delegation

that the people who are to be delegated are within the employ of the office of the Environmental Commissioner?

Mr Lessard: It doesn't seem to be in this provision and I'm not aware of it being in any other provision of the legislation.

Mr David Johnson: The chairman of Greenpeace, for example, or Pollution Probe or It's Not Garbage; you know, any member of an environmental group.

Mr Lessard: There are no restrictions.

Mr David Johnson: No restrictions—

Mr Wiseman: They wouldn't be able to do that—

The Chair: Order. Try it one at a time. Is there an answer?

Mr David Johnson: It could be any citizen.

The Chair: Okay. Mr Wiseman?

Mr Wiseman: No, never mind.

Mr David Johnson: So it's non-restrictive whatsoever. It can be any citizen of the planet, then, presumably.

Mr Lessard: Right.

Mr David Johnson: Have you really thought this through? It sounds unbelievable.

Mr Offer: Especially since it's not limited to people of this planet.

Mr David Johnson: Yes, it doesn't even have to be on the planet; that's right. If the commissioner delegates some authority to somebody who has a clear bias in a situation, this exercise is not going to be perceived to be fair and just. Is there any response to that?

1550

Mr Lessard: I would think that in situations where the commissioner was going to be examining persons under oath or requiring examination of evidence, you're talking about something that's almost a quasi-judicial process and would require some elements of fairness in exercising that role. If it were restricted to persons who were in the employ of the commissioner's office, that would really restrict the ability to establish some special investigative body, for example, to conduct an investigation or to retain outside counsel, for example. There could be a number of situations where that necessity may arise.

The Chair: Further questions or comments? Shall Mr Lessard's amendment to subsection 60(3) carry? Carried.

Mr Offer, you have an amendment to section 60?

Mr Offer: Yes, I move that section 60 of the bill be amended by adding the following subsection:

"Duty to cooperate

"(3) The Environmental Commissioner may from time to time require any officer, employee or member of any governmental organization who, in his or her opinion, is able to give any information relating to any matter that is being investigated by the Environmental Commissioner to provide him or her with that information and to produce any documents or things that, in his or her opinion, relate to the matter and may be in the possession or control of that person."

Basically, the reason for the amendment is to give to the Environmental Commissioner some greater power that, when someone has requested the Environmental Commissioner to do something and the Environmental Commissioner has the responsibility of making inquiries with another body within the ministry, the people to whom the Environmental Commissioner makes that request are in fact obligated, within the bounds of existing legislation, to cooperate with the Environmental Commissioner in the carrying out of his or her duties.

Mr Lessard: The act really isn't set up for the purposes of permitting the Environmental Commissioner to conduct his own investigations. It does permit him, in section 60, to examine persons under oath or to require the production of documents or evidence in the performance of the commissioner's duties pursuant to this act. However, this doesn't have that same restriction. It really implies that the Environmental Commissioner can conduct investigations and, in the course of conducting those investigations, require the production of documents or things that may relate.

That's not part of the functions of the Environmental Commissioner. In fact, those are functions that may most likely be conducted by ministers or within ministry offices, and to provide that power to the Environmental Commissioner would actually be a duplication of responsibilities. He would be able to do investigations in addition to ministers or ministries doing investigations. I know that's a concern that's come up on several occasions in the course of our discussions as something that we wanted to try to avoid.

Mr Offer: Basically, it means that if somebody wants to avail himself of the services of the Environmental Commissioner and in fact does so, and the Environmental Commissioner makes a request to another ministry and the ministry says no for no reason whatsoever, then the only thing that's available to the Environmental Commissioner, notwithstanding the substantive nature of the request or the bona fides of the request, is to make that public in the annual report.

Mr Lessard: To the Legislature. Right.

The Chair: Further questions or comments? Shall Mr Offer's amendment to section 60 carry? All in favour? Opposed? The amendment is lost.

Further questions and comments regarding section 60? Shall section 60, as amended, carry? Carried.

Section 61: Questions, comments or amendments to section 61? Shall section 61 carry? Carried.

Section 62. Mr Offer.

Mr Offer: I move that subsection 62(1) of the bill be amended by adding after "following" in the third line "unless he or she is of the opinion that the application is frivolous or vexatious."

The Chair: And the reason is?

Mr Offer: The reason is that I would like to give the Environmental Commissioner the opportunity of making a decision at his or her desk with the staff that he or she will have and the delegation powers that he or she now has and to inform that person that the request is indeed frivolous or vexatious. It is just something in which the

Environmental Commissioner, I would think, in the choosing of that person, would have the expertise to make that decision, and in fact would form the subject matter of the annual report to the Legislature.

I think there are a whole variety of other examples where people who are called upon to investigate matters can make the decision at the outset that something is clearly and totally frivolous and/or vexatious. There are examples that this happens. In fact, that doesn't stop people from making claims. Rather, it cleanses the process in terms of giving to the general public an idea as to how their particular question is viewed and, if it happens to be viewed as frivolous or vexatious, why that happens to be the case. Maybe that's not a bad power that the Environmental Commissioner should have.

Mr Wessinger: I'd just like to raise a question for perhaps the parliamentary assistant or legal counsel in this matter. My concern with this amendment is that by adding it to it, in effect we are saying to the Environmental Commissioner that he has an obligation to refer all matters for review unless they are frivolous or vexatious. In effect, the result of the amendment would take away the discretion of the Environmental Commissioner to make a decision on whether it's appropriate to refer. It might be not appropriate to refer even if the matter was not frivolous or vexatious in the sense that it was not felt to be—I don't know. I'm just asking that question for the parliamentary assistant or legal counsel because my concern is that this amendment would in effect require a referral of all matters unless they were deemed frivolous or vexatious.

Mr Lessard: The concern that I have is the fact that you're really trying to expand the powers of the Environmental Commissioner. As Mr Shaw indicated earlier, there's a possibility of thousands of instruments and proposals and policies being listed on the registry. For a determination to be made as to whether any one of those is frivolous or vexatious and shouldn't be referred to a relevant ministry would require all of them to actually be scrutinized by staff at the Environmental Commissioner's office and would very likely necessitate an increased amount of staff and a much larger budget to run that office.

If they didn't have the expertise within the Environmental Commissioner's office to make the determination as to whether something was frivolous or vexatious, then they'd have to rely on the expertise of the ministry that may be responsible, and that could add to significant delays and really would again result in a duplication of efforts. The function of the commissioner is to ensure that instruments are placed on the registry and that people are given an opportunity to make public input and then to review the way various ministries comply with the act, not to make determinations as to the validity of comments or questions that may be raised by the public.

1600

Mr David Johnson: Mr Chairman, as you are aware, I had a similar amendment to add paragraph 62(1)3 to effectively accomplish the same thing, so I would be supportive of the motion.

The government's indication was that it didn't feel

there would be very many appeals under the Environmental Bill of Rights. We put forward the motion on the basis that surely there could be some criteria developed such that the Environmental Commissioner and his very limited staff could quickly go through those appeals that did come in. The criteria could be set for what is frivolous or what has no merit, and those could be weeded out. That would remove the uncertainty that would be hanging over the head of the person who would be having the appeal lodged against him, in a sense, plus the necessity for that person to be aware of what's going on, build a case, have staff involved with it, have legal counsel involved, perhaps, and have that hanging over his head.

On the basis that the government's saying there aren't going to be that many appeals anyway, and that some probably relatively simple guidelines could be determined as to what "frivolous" and "no merit" would include, I think this could be workable, and I'd support it.

Mr Lessard: First of all, we're not talking about appeals in this section; we're talking about applications for review.

Mr David Johnson: What's the difference?

Mr Lessard: I don't recall any of the ministry staff referring to how many applications for review may be expected, because it's very difficult to determine how many groups of any two people may make application to the Environmental Commissioner for the review of a policy, act, regulation or instrument to the appropriate minister. We don't have any way of determining what the response to that provision may be at this point.

I know from my experience as a lawyer that what's frivolous and vexatious is really a term that's developed by interpretation of various cases, and sometimes it's even difficult for courts to determine what may be frivolous or vexatious. It requires some evidence to be presented to make that determination. I don't think that's a responsibility we want to place on the Environmental Commissioner's office. You've been concerned on many occasions about the cost of administering this act, and it would seem very clear that if this was a determination that would have to be made by that office, it would require additional staff and additional resources.

The Chair: Further questions or comments to Mr Offer's amendment to subsection 62(1)? Shall Mr Offer's amendment to subsection 62(1) carry? All in favour? Opposed? That's lost.

I see that Mr Johnson has an amendment. I think he will agree that the question has been decided on his amendment to 62(1)3, so it may not be in order.

Mr David Johnson: I'll bow to your wisdom, Mr Chairman.

The Chair: Further questions or comments on section 62? Shall section 62 carry? Carried.

Section 63.

Mr Lessard: I move that clause 63(2)(a) of the bill be struck out and the following substituted:

"(a) a review of an existing act, regulation or instrument other than a prescribed act, regulation or instrument."

The authority to make regulations enables things to be prescribed. The change in wording ensures that grammatically the clause refers to things that are prescribed rather than things that are not prescribed so that the wording parallels the regulation-making authority. This is a fairly technical change in the wording.

The Chair: Shall Mr Lessard's amendment to clause 63(2)(a) carry? Carried.

Mr David Johnson: I move that subsection 63(2) of the bill be amended by adding the following clause:

"(c) a review of the existing instrument that was issued under the Environmental Assessment Act, the Environmental Protection Act or the Ontario Water Resources Act."

This amendment suggested by the Ontario Waste Management Association is consistent with earlier amendments, which I think were turned down, which protect the validity of established public participation processes included within approval processes under the Environmental Protection Act, the Environmental Assessment Act and the Ontario Water Resources Act.

This amendment, along with earlier amendments, will ensure that individuals will not be able to utilize provisions of the Environmental Bill of Rights immediately after the required hearings conducted through the processes of the aforementioned acts.

I guess we had that discussion this morning. The concept here is that we don't drag people through the same process twice. That's certainly the view of the Ontario Waste Management Association. I concur with its views and I've put forward the amendment here.

Mr Lessard: If this amendment were to pass, it would remove all instruments issued under the Environmental Protection Act and the Ontario Water Resources Act from the request-for-review provisions of the bill. That would mean the public couldn't request a review of an instrument, no matter what its age and no matter whether there hadn't been public participation in the original decision. This would include such instruments as certificates of approval for waste disposal sites, waste processing sites, transfer stations, sewer treatment facilities, director's orders and other things as well.

It would also prevent new socioeconomic, scientific or other evidence being taken into consideration with respect to old instruments, and that refers to section 68, which provides the five-year requirement for matters to be reviewed if they've already been part of a public participation process.

Mr David Johnson: I'll simply briefly reiterate that there's a perception, and an accurate one, I think, among several industries, not only waste management but mining and forestry and by the municipalities as well, that this could be a never-ending loop of various approvals and hearings that one will have to go through to obtain valid permits, licences and other approvals. I think that's perhaps an accurate perception.

It's also my understanding that the minister has the authority to waive that five-year period, so there is again a perception out there that the five-year provision isn't a whole lot that you can take to the bank.

Mr Lessard: That's why I referred to section 68, where you can waive that five-year provision if there is socioeconomic, scientific or other evidence that failure to review the decision would result in significant harm to the environment. This would take away that ability to review things based on those factors.

1610

Mr David Johnson: The concern in a number of industries is that, based on that clause, there certainly is the possibility that there could be constant reviews, over and over again. In particular, socioeconomic kinds of complaints or requests for review are open to interpretation. It's hard to decide precisely what sort of information would be needed there, and certainly the way is clear for anybody to stand up and indicate that their socioeconomic wellbeing is being harmed by something that has been reviewed a year ago, for example.

Again we have the prospect of continual reviews in certain industries. Certain industries are very concerned that they will face a very frequent review situation, and this would be detrimental to them and will be harmful to job creation and the economy.

The Chair: Further questions or comments?

Shall Mr Johnson's amendment to clause 63(2)(c) carry? It's lost.

Further questions, comments or amendments to section 63? Shall section 63, as amended, carry? Carried.

Section 64 and section 65: Questions, comments or amendments to sections 64 and 65? Shall sections 64 and 65 carry? Carried.

Section 66; Mr Johnson.

Mr David Johnson: I move that section 66 of the bill be struck out and the following substituted:

"Notice to persons with direct interest

"66(1) A minister who receives an application for review from the Environmental Commissioner in respect of an instrument shall also give notice that the application has been made to the holder of the instrument and to any other person who the minister considers ought to get the notice because the person might have a direct interest in matters raised in the application.

"Same

"(2) A notice under subsection (1) shall include a copy of the application."

As a matter of consistency with the previous amendment that I placed earlier to section 35, we have concern with respect to the minister forwarding appropriate information regarding an application for review to the affected instrument holder. This amendment ensures that the holder of an instrument receives the relevant information from the minister regarding an application for review.

I think that's only an element of fairness. The parliamentary assistant may quarrel with this, but in a sense, if the holder is being charged or if some sort of review or something is being requested against that permit, then the accused should have knowledge and be aware of the situation.

Mr Lessard: The way subsection 66(1) is drafted at

the present time, it requires the minister to give notice to a person who may have a direct interest in matters raised in the application for review. That would include the holders of instruments, in my submission, and subsection (2) really would, in my mind, be a breach of the privacy of the person who may be making an application for review. They have the right to remain anonymous, and providing a copy of the application would indicate who was making the application for review to the person being reviewed. That's not something we're in favour of.

Mr David Johnson: I gather in the first part, then, the parliamentary assistant concurs that the holder of the instrument be informed. It's just too bad it doesn't specify that clearly, because some people are not clear that in fact that will happen. If it is going to happen, if there was intent that it would happen, then it's too bad that it isn't clarified here.

I must say, there is a difference of opinion about whether two people in the province of Ontario should be able to anonymously accuse or ask for a review, put an industry or an individual or whatever through a process, and should be able to do that anonymously. That certainly wouldn't happen in the courts in our province. It could lead to all sorts of abuse. I think it will be interesting to see what experience we have with that aspect of the bill.

The Chair: Further questions or comments on Mr Johnson's amendment to section 66? Shall Mr Johnson's amendment to section 66 carry? All in favour? Opposed? The amendment is lost.

Further questions or comments on section 66? Shall section 66 carry? Carried.

Questions, comments or amendments to sections 67 and 68? Shall sections 67 and 68 carry? Carried.

Section 69.

Mr Lessard: I move that subsection 69(1) of the bill be amended by adding at the end "within a reasonable time."

The explanation with respect to that amendment would be to require the minister who had determined that a review should be conducted to conduct that review within a reasonable time. I would think Mr Johnson would think that would be a reasonable amendment.

Mr David Johnson: I don't disagree with the parliamentary assistant, but what is his definition of "reasonable"?

Mr Lessard: I guess everybody has different interpretations of what's reasonable.

The Chair: Further questions or comments? Shall Mr Lessard's amendment to subsection 69(1) carry? Carried.

Questions or comments to section 69? Shall section 69, as amended, carry? Carried.

Questions, comments or amendments to sections 70 and 71? Shall sections 70 and 71 carry? Carried.

Section 72.

Mr David Johnson: I move that the bill be amended by striking out section 72.

We discussed this just a couple of minutes ago. I'm moving the deletion of section 72—section 81, I guess, will come up later—on the recommendation of the

Association of Municipalities of Ontario. Sections 72 and 81 provide that personal information on applicants requesting reviews or investigations should not be disclosed. In other words, you can make an anonymous request for a review, an anonymous complaint, in a sense. It is the contention of the Association of Municipalities of Ontario that deletion of these sections will provide a safeguard against obstructive claims.

Also, the identity of the complainants may initiate a resolution by encouraging an open resolution as opposed to a costly structured resolution through the government or the courts. In other words, AMO is saying that if the accused and the accuser were able to understand each other and know who each other was, they might be able to sit down together and simply rectify the problem without going through this formalized process.

They're also concerned about claims that may not be constructive. They don't use the words "frivolous" or "vexatious," but I guess if I went beyond what they say, that could be the case. If your name isn't there, then certainly it's much easier to put in any sort of complaint than it would be if you were required to sign your name to it.

1620

The Chair: In order to be a little helpful to you, Mr Johnson, I would tell you that the way to actually do what you're intending to do is to vote against this section rather than attempt to put an amendment which happens to be out of order.

Mr David Johnson: I see.

The Chair: I'm going to have to reluctantly rule this out of order.

Mr David Johnson: I appreciate your guidance.

Mr Wiseman: Is that a sign of bias?

Mr Mammoliti: Don't do it reluctantly.

The Chair: I'm just trying to be helpful. Mr Johnson is a relatively new member.

Mr David Johnson: You're being very helpful, Mr Chair. I appreciate your continued—

The Chair: I'm sure in the future he would not put an amendment like this.

Mr David Johnson: I hope I can remember as far as section 81, but my memory isn't very good this afternoon.

The Chair: We will deal with section 72. Do I have questions, comments or amendments to section 72? Shall section 72 carry? All in favour? Opposed? It's carried.

Do we have questions or comments to section 73 and section 74? Shall sections 73 and 74 carry? Carried.

Mr Offer has an amendment to section 75.

Mr Offer: I move that section 75 of the bill be amended by adding at the end "unless he or she is of the opinion that the application is frivolous or vexatious."

The rationale behind this amendment is the same as that amendment which was moved by myself under subsection 62(1).

Mr Lessard: And my response is the same, that it would require additional staff and additional resources at

the Environmental Commissioner's office to make that determination and may add to the length of time it would take to make that determination.

The Chair: Shall Mr Offer's amendment to section 75 carry? All in favour? Opposed? Mr Offer's amendment is lost.

Mr David Johnson: My amendment goes a little bit beyond that.

I move that section 75 of the bill be amended by adding the following subsection:

"Where referral not required

"(2) Despite subsection (1), the Environmental Commissioner need not refer an application to a minister if the commissioner considers that,

"(a) the application is frivolous or vexatious;

"(b) the alleged contravention is not serious enough to warrant an investigation; or

"(c) the alleged contravention is not likely to cause harm to the environment."

In explanation, in the interest of maintaining the integrity of the environmental review process and avoiding the necessity of reviewing frivolous complaints at both the ministerial level and at the commissioner's office, the commissioner should have the authority to reject an application without passing it on to the minister. This is an amendment that was suggested by the Ontario Forest Industries Association.

Mr Lessard: The same explanation as with the previous suggested amendment, in that it would need additional staff, it would cause delays. This is a duplication of subsection 77(2) and the powers that the minister has in that section. To have the Environmental Commissioner have identical powers could lead to duplication and to significant delays.

The Chair: Shall Mr Johnson's amendment to subsection 75(2) carry? All in favour? Opposed? Mr Johnson's amendment is lost.

Questions, comments or amendments to section 75? Shall section 75 carry? Carried.

Section 76.

Mr David Johnson: I move that section 76 of the bill be amended by adding the following subsections:

"Notice to affected persons

"(2) Within twenty days of receiving the application from the Environmental Commissioner, the minister shall take every reasonable step to give notice that the application has been made to,

"(a) any person alleged in the application to have been involved in the commission of the contravention; and

"(b) any other person who the minister considers might have been involved in the commission of the contravention.

"Same

"(3) A notice under subsection (2) shall include a copy of the application."

This is to ensure, again, that the holder of an instrument is properly notified of an application for investigation. We move that section 76 be amended to require a

submission of the request to all parties involved, including a copy of the actual application. One of the deputants requesting this certainly was Laidlaw. I do believe, from the look on the parliamentary assistant's face, that he feels he's already addressed this issue and is prepared to turn thumbs down on it.

Mr Lessard: This would be like notifying drug dealers that you had a search warrant to come over and search their house. It would make it pretty difficult to conduct an investigation and gather evidence if you were to give notice that you were coming over to do so. Also, on subsection (3), my response is the same, that it would be a violation of the Freedom of Information and Protection of Privacy Act.

Mr David Johnson: It's interesting, just briefly, that the parliamentary assistant might have chosen another analogy than to equate—

Mr Lessard: I could have.

Mr David Johnson: I just mentioned the firm Laidlaw, and (1) to use the analogy of a drug dealer is a very unfortunate comparison and (2) there is an implication that the firm having the review or the request for a review against it is guilty until proven innocent. I think those are both unfortunate analogies.

Mr Wiseman: Just on that comment, the element of being able to, on the basis of probable cause, investigate an establishment or an area is important because there are some—and I'm not pointing out anybody in particular—companies in some places that, if they knew they were being investigated, would clean up.

So that whenever the inspectors or whoever showed up, there would be nothing to see. I think it's important that we understand that if a company or some municipality or other group was acting in that way in contravention of the law, it wouldn't be too far to assume that it would clean up so that it wouldn't be in contravention. I just wanted to make that point because my experience is that on more than one occasion that has happened.

Mr Offer: Just after listening to the discussion, I must share the concern of Mr Johnson. I think it was an unfortunate and inappropriate example to be chosen in terms of trying to make sense of a particular section. I don't think any company or any person would appreciate having that analogy affixed to them.

The Chair: Further questions and comments to Mr Johnson's amendment? Shall Mr Johnson's amendment to subsections 76(2) and (3) carry? All in favour? Opposed? Mr Johnson's motion is lost.

Shall section 76 carry? Carried.

Section 77: Questions, comments or amendments? Shall section 77 carry? Carried.

Section 78.

Mr David Johnson: I move that clause 78(1)(b) of the bill be struck out and the following substituted:

"(b) Each person to whom a notice has been given under subsection 76(2); and"

This amendment is required to complement the provisions of a previously introduced amendment on section—I guess it doesn't make any sense any more. I should

have read that first.

1630

The Chair: Yes.

Mr David Johnson: I should have read that first.

The Chair: Mr Johnson, I'm afraid this amendment is out of order, given the disposition of your amendment to 76.

Mr David Johnson: I abide by your decision.

The Chair: Further questions or comments regarding section 78? Shall section 78 carry? Carried.

Sections 79 and 80: Questions, comments or amendments to sections 79 and 80? Shall sections 79 and 80 carry? Carried.

Section 81.

Mr David Johnson: Mr Chair, I was going to move that this be struck out, but after your excellent advice, still bearing in mind that it's the contention of the Association of Municipalities of Ontario that having deleted this section would have provided a safeguard against obstructive claims, and also, the identity of the complainants may initiate a resolution by encouraging an open resolution as opposed to costly structured resolution through the government or the courts, nevertheless I will simply vote against this clause and not offer an amendment at this time.

The Chair: I'm happy you're on the fast learning curve, Mr Johnson.

Section 81, questions, comments or further amendments? Shall section 81 carry? All in favour? Opposed? Section 81 is carried.

Section 82: questions or comments or amendments? Shall section 82 carry? Carried.

Section 83.

Mr David Johnson: I move that section 83 of the bill be amended by striking out "a contravention" in the second line and substituting "an alleged contravention".

According to the present wording, Bill 26 does not grant a defendant the expressed right to allow a defendant to be considered innocent until proven guilty. Therefore, sections 83 and 84 should be amended to make reference to any alleged contravention, as in the case of subsection 74(1) of the bill.

I think I alluded to this earlier, that if there is a review being requested or a charge being made, the party to which the review or charge is being directed towards should be considered innocent. Normally that's the procedure in our courts, certainly, in the province of Ontario. They must be proved to be guilty before they're considered guilty. That's the essence of this amendment.

Mr Lessard: We did discuss this when the group was here. Basically the way the section reads now it would require that there be a contravention as a prerequisite to bringing an action. If you were to change the words to read "an alleged contravention," that would mean you could actually bring an action before someone had been found guilty. It would only be alleged. I don't think that's something you intend to have happen. It would actually lower the threshold for bringing an action. It doesn't accomplish what it is they had hoped it would.

The Chair: Further questions or comments? Shall Mr Johnson's amendment to section 83 carry? All in favour? Opposed? Lost.

Further questions or comments to section 83? Shall section 83 carry? Carried.

Mr Johnson, for section 84.

Mr David Johnson: I move that subsection 84(1) of the bill be struck out and the following substituted:

"Right of action

"(1) Where a person will imminently contravene or has allegedly contravened an act, regulation or instrument prescribed for the purposes of part V and the imminent or alleged actual contravention will imminently cause or has caused significant harm to a public resource of Ontario, any person resident in Ontario may bring an action against the person in the court in respect of the harm and is entitled to judgement if successful."

It's the same rationale I indicated earlier for section 83.

The Chair: Further questions or comments? Shall Mr Johnson's amendment to subsection 84(1) carry? No.

Mr David Johnson: I have another amendment to subsection 84(10).

I move that subsection 84(10) of the bill be struck out and the following substituted:

"Rules of court

(10) The rules of court, including rules as to costs, apply to an action under this section."

Members of the public should not assume there will be little, if any, financial consequences to the initiating of court action. Court actions under this legislation should not be considered as Environmental Assessment Act-type hearings where members of the public are reimbursed for costs even if they were unsuccessful in convincing a tribunal to proceed with the undertaking. Again, Laidlaw was one of the parties that brought this to our attention.

The Chair: Questions, comments?

Mr Lessard: It's my submission that this is already dealt with in section 100. It talks about the courts exercising their discretion with respect to costs.

The Chair: Further questions or comments to Mr Johnson's amendment to subsection 84(10)?

Shall Mr Johnson's amendment to subsection 84(10) carry? All in favour? Opposed? The amendment is lost.

Further questions or comments to section 84? Shall section 84 carry? Carried.

Sections 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104: Are there questions or comments or amendments to those sections? Shall sections 85 through 104, inclusive, carry? Carried.

Section 105.

Mr Lessard: I move that paragraph 1 of subsection 105(3) of the bill be amended by striking out "the making of" in the first line and substituting "decision-making about."

This amendment expands the whistleblower protection to include not only the initial making of a statement of environmental values, policy, act, regulation or instrument

but also any subsequent modifications of them.

The Chair: Questions, comments? Shall Mr Lessard's amendment to subsection 105(3) carry? Carried.

Further questions or comments to section 105? Shall section 105, as amended, carry? Carried.

1640

Sections 106 through 117, inclusive: questions, comments or amendments? Shall sections 106 through 117, inclusive, carry? Carried.

Section 118. Mr Johnson.

Mr David Johnson: We're getting there, Mr Chair.

The Chair: Making great progress.

Mr David Johnson: I move that subsection 118(2) of the bill be amended by striking out the words "respecting a proposal for an instrument" at the end.

Subsection 118(2), as it is presently worded, holds that a judicial review application can be filed if a minister has failed to comply with requirements of part II of the bill respecting a proposal for an instrument. Part II also applies to policies, acts and regulations. To make the bill more manageable for instrument holders, we propose the deletion of the words "respecting a proposal for an instrument" at the end of that clause.

Mr Lessard: This would make all of part II of the Environmental Bill of Rights subject to judicial review, and that would include public participation with respect to policies and regulations. The bill provides for ministerial discretion in determining whether the public should be given the opportunity to comment on a proposal or a policy or regulation. What this provision would do would be to subject ministerial discretion to judicial review, which would be totally inappropriate. Judicial review is usually used with respect to decisions leading to the granting of approvals or things of that nature and not used for exercising discretion with respect to policies.

The Chair: Questions, comments? Shall Mr Johnson's amendment to section 118(2) carry? All in favour? Opposed? Mr Johnson's amendment is lost.

Further questions, comments or amendments to section 118? Shall section 118 carry? Carried.

Sections 119 and 120: questions, comments or amendments? Shall sections 119 and 120 carry? Carried.

Section 121: questions, comments or amendments to section 121. Mr Lessard.

Mr Lessard: I don't have any comments.

The Chair: Mr Johnson has an amendment to section 121.

Mr David Johnson: I move that the bill be amended—

Mr Wessinger: Mr Chair, I believe it's a new section, since it's 121.1.

The Chair: That's right. Thank you, Mr Wessinger. Questions, comments regarding section 121?

Mr David Johnson: Mr Chair, I have an amendment.

The Chair: Yes, you can put 121.1. That's really a new section. That's what Mr Wessinger just helpfully pointed out to the Chair.

Shall section 121 carry? All in favour? Opposed? The section will be struck out.

Now, Mr Johnson.

Mr David Johnson: I move that the bill be amended by adding the following section:

"Review of act

"121.1 Within three years of the coming into force of this act, a committee of the Legislature shall conduct a review of the act to advise the minister responsible for the administration of the act on whether it is advisable for the act to continue in force."

By way of explanation, a mandatory review of the act should be initiated after three years to determine the legislation's effectiveness at dealing with environmental investigations and reviews. It should also be noted that the intention of this legislation is to settle disputes without going to court and the legal system would be considered as a last resort. Therefore, the effectiveness of the legislation at avoiding legal action should also be considered.

During the course of our deputations, there were a number of concerns that were raised. I have posed many amendments in an attempt to address those concerns. I guess they've all been voted down, but it perhaps points out the necessity to have a look at this and to have the review specified to see whether some of those concerns are valid or are causing hardship. There is concern that this bill may cause hardship in a number of sectors within our society, so our suggestion is that we simply incorporate a precise time for a review to re-examine how effective this whole thing has been and what hardships, if any, have been caused.

The Chair: Questions or comments regarding Mr Johnson's amendment?

Mr Lessard: Legislation is always subject to review and can be repealed or amended at any time. Even though in terms of the amendments the responsibility for administration of the act may lie with the Minister of Environment and Energy, as he's the minister who has introduced this bill, the administration of the act is really within the purview of the Environmental Commissioner. I'm not sure that reviewing this and advising the minister responsible would have much of an impact.

Mr David Johnson: I'm disappointed again, Mr Chairman. I thought the parliamentary assistant was going to suggest, "Make it two years instead of three years." I simply point out that it's always possible, but if there isn't some date or some period, and I guess it would be called a sunset clause, then these kinds of reviews always fall by the wayside and tend not to happen. I'll just leave it at that.

Mr Offer: On that point, what the parliamentary assistant said with respect to this particular amendment holds, but only to a point. Where you have a section specifying review of a particular piece of legislation in the act, then it becomes the will of the Legislature to review the legislation. Always, any government can call any particular piece of legislation for review at any time, but it is at its call. Sometimes, legislation which should be reviewed isn't reviewed. Where a section like this is

put in legislative form, then it becomes the will and the dictate of the Legislature that a particular piece shall be reviewed.

Firstly, there is a safeguard mechanism attached to it. Secondly, it does not mean that while the legislation is reviewed, it is necessarily of no effect. The legislation can still proceed while the review is ongoing. It's just that it is taken away from the political sphere and put into the Legislature, and that's not necessarily a bad idea.

The Chair: Further questions or comments?

Mr Lessard: As part of the provisions of the bill, it is necessary to prepare a report and report to the Legislature. Therefore, it does come before the Legislature. I'm trying to think of examples of legislation that may have been passed by any government, Liberal or Tory, that has some sort of provision for a mandatory review, and I can't really think of any.

Mr Offer: What about farm stabilization? Is that coming back?

The Chair: Further questions or comments? Shall Mr Johnson's amendment, section 121.1, carry? All in favour? Opposed? Mr Johnson's amendment is lost.

Do you have another amendment, Mr Johnson, a section 121.2?

Mr David Johnson: I'm not aware that I do. Oh, yes, I know the one you're referring to. It was previously voted down.

1650

The Chair: Mr Lessard, section 122.

Mr Lessard: I move that subsection 122(1) of the bill be amended by adding the following clause:

"(j.1) specifying intervals at which reviews of regulations under subsection 21(1) shall occur;"

The explanation for this amendment is that it provides regulation-making authority to specify the interval at which ministries' instrument classification regulations are to be reviewed.

The Chair: Questions or comments? Shall Mr Lessard's amendment adding clause 122(1)(j.1) carry? Carried.

Mr Lessard: I move that clause 122(1)(n) of the bill be struck out and the following substituted:

"(n) respecting mediation under section 34, including but not limited to regulations respecting the costs of mediation, the confidentiality of representations made during mediation and the procedures to be followed in mediation;"

This amendment adds clarification to ensure that costs, confidentiality and procedures may be adequately addressed by regulation to provide for effective mediation.

The Chair: Questions or comments? Shall Mr Lessard's amendment to clause 122(1)(n) carry? Carried.

Further questions or comments to section 122? Shall section 122, as amended, carry? Carried.

Section 123, questions, comments or amendments? Shall section 123 carry? Lost. The section will be struck out.

Section 124.

Mr Lessard: I move that section 124 of the bill be amended by striking out "this act receives royal assent" wherever it appears and substituting "this section comes into force."

The explanation is that as this act comes into force on proclamation, the amendment to subsections (2) and (3) ensures that there can be no clash between the coming into force of provisions of the Environmental Bill of Rights and Bill 99, which is the bill with respect to the Limitations Act.

The Chair: Questions or comments? Shall Mr Lessard's amendment to subsection 124 carry? Carried.

Further questions or comments to section 124? Shall

section 124, as amended, carry? Carried.

Shall sections 125 and 126 carry? Carried.

We have two amendments that have been stood down.

Mr Lessard: I'm going to ask that the amendment to the preamble be withdrawn and ask that the amendment with respect to section 2.1 be withdrawn as well.

The Chair: Shall the bill, as amended, carry? Carried.

Shall the bill be reported to the Legislature? Carried.

I would like to thank the committee for its cooperation. I'd especially like to thank the Hansard staff, the legal staff, the clerk and all others who've expressed an interest in this bill. I look forward to further debate on this bill on third reading in the Legislature.

The committee adjourned at 1656.

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STANDING COMMITTEE ON GENERAL GOVERNMENT

***Chair / Président:** Brown, Michael A. (Algoma-Manitoulin L)

***Vice-Chair / Vice-Président:** Daigeler, Hans (Nepean L)

Arnott, Ted (Wellington PC)

Dadamo, George (Windsor-Sandwich ND)

*Fletcher, Derek (Guelph ND)

*Grandmaître, Bernard (Ottawa East/-Est L)

*Johnson, David (Don Mills PC)

*Mammoliti, George (Yorkview ND)

Morrow, Mark (Wentworth East/-Est ND)

Sorbara, Gregory S. (York Centre L)

*Wessenger, Paul (Simcoe Centre ND)

White, Drummond (Durham Centre ND)

**In attendance / présents*

Substitutions present/ Membres remplaçants présents:

Lessard, Wayne (Windsor-Walkerville ND) for Mr Dadamo

Mathysen, Irene (Middlesex ND) for Mr Morrow

Offer, Steven (Mississauga North/-Nord L) for Mr Sorbara

Wiseman, Jim (Durham West/-Ouest ND) for Mr White

Also taking part / Autres participants et participantes:

Ministry of Environment and Energy:

Lessard, Wayne, parliamentary assistant to the minister

Shaw, Bob, implementation coordinator, environmental bill of rights office

Clerk / Greffier: Carrozza, Franco

Staff / Personnel: Leitman, Marilyn, legislative counsel



Legislative Assembly of Ontario

Third Session, 35th Parliament

Assemblée législative de l'Ontario

Troisième session, 35^e législature

Official Report of Debates (Hansard)

Monday 17 January 1994

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Lundi 17 janvier 1994

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Comité permanent des affaires gouvernementales

Rapport de sous-comité

Loi de 1993 modifiant des lois
en ce qui concerne
les immeubles d'habitation

Chair: Michael A. Brown
Clerk: Franco Carrozza

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STANDING COMMITTEE ON GENERAL GOVERNMENT

Monday 17 January 1994

The committee met at 1406 in the Humber Room, Macdonald Block, Toronto.

SUBCOMMITTEE REPORT

The Chair (Mr Michael A. Brown): The standing committee on general government will come to order. The first order of business this afternoon is to ratify the subcommittee report. I believe all members have a copy in front of them. I would like someone to move its adoption.

Mr George Mammoliti (Yorkview): Moved.

The Chair: Mr Mammoliti has moved the adoption of the subcommittee report. Do we have some discussion?

Mr David Johnson (Don Mills): I don't have a copy.

The Chair: We will get you one, Mr Johnson.

Mr David Johnson: I understand that there are more deputations are being requested than the time that is allotted permits.

The Chair: That is correct, Mr Johnson.

Mr David Johnson: In that regard, allow all of those who are interested in this topic—and really we're talking about two major topics—has there been any discussion of extending the time to permit that to happen?

The Chair: You of course have the subcommittee report in front of you, which outlines the attitude that the subcommittee took at its meeting.

Mr David Johnson: I wonder, at the time that the subcommittee was dealing with this, if they realized how many deputations there were.

The Chair: I can say that the subcommittee was aware there were more deputants asking for space to be heard than we had spaces for.

Mr David Johnson: Was this the unanimous agreement of the subcommittee?

The Chair: All subcommittee reports are unanimous.

Interjection: By definition.

Mr Mammoliti: We hugged at the end of it.

The Chair: I might say there was a lively discussion about many issues, but this was the consensus of the committee.

Mr Mammoliti has moved the subcommittee report. All those in favour? Carried.

RESIDENTS' RIGHTS ACT, 1993

LOI DE 1993

MODIFIANT DES LOIS EN CE QUI CONCERNE
LES IMMEUBLES D'HABITATION

Consideration of Bill 120, An Act to amend certain statutes concerning residential property / Projet de loi 120, Loi modifiant certaines lois en ce qui concerne les immeubles d'habitation.

The Chair: The Legislature has instructed us to consider Bill 120, An Act to amend certain statutes concerning residential property. We are pleased to have

the minister with us today. Welcome, Minister. We will begin with the minister's statement, followed by a response from the two critics.

Hon Evelyn Gigantes (Minister of Housing): Do you want to mention that Ms Marland is not able to be with us?

The Chair: I should inform the committee that due to illness, Ms Marland is not able to attend this afternoon.

Hon Ms Gigantes: Thank you, Mr Chair. I appreciate this opportunity to speak to the committee about Bill 120, the residents' rights bill.

Our government introduced this bill because while some tenants are protected by our laws in Ontario, others are not. Thousands of tenants have been denied the everyday protection afforded by the laws of this province. Bill 120 will give these residents the protection that Ontario's other 1.2 million tenants already have.

The tenants we are concentrating on in Bill 120 are residents of care homes and apartments in houses. In care homes, the lack of protection has meant residents don't have any privacy or are faced with the threat of losing their apartment at a moment's notice.

Tenants living in apartments in houses may have to put up with unsafe living conditions because they simply can't afford to complain. Unfair zoning bylaws keep them quiet about safety or maintenance problems because they know their apartment may be closed down if they speak up.

Our government believes that a person living in a care home or an apartment in a house should have the same rights, the same security and the same protection under the law as other tenants in this province.

I'd like to concentrate for a few moments on care homes. As the committee knows, early on our government appointed Dr Ernie Lightman to conduct an inquiry into the province's unregulated care homes—into what has been a long-standing, unhappy and unacceptable situation—and we asked him to recommend ways to remedy that.

In his investigation, Dr Lightman found that care home residents are vulnerable to several forms of abuse: eviction at a moment's notice, with their belongings stuffed into garbage bags; unsafe living conditions; inadequate care; lack of privacy; sexual abuse; and problems affecting health and personal safety.

There are an estimated 47,000 people living in these care homes: frail elderly people, former psychiatric patients and others with developmental or physical disabilities. Their safety, security and personal dignity—very basic human rights—is what is at the heart of the care home measures in this bill.

The amendments proposed in this bill provide the full protection of both the Landlord and Tenant Act and the Rent Control Act to care home residents. Care homes will

also be protected against conversion to other uses under the Rental Housing Protection Act.

The Rent Control Act will apply to that portion of the monthly charge which covers accommodation. The amount paid for care and meals will not be covered by rent control because this figure varies so widely from home to home, from resident to resident, and for individual residents from time to time.

While the costs of care services will not be regulated, care home operators will be required to register three basic matters of information with the rent registry. Those are the rents, charges for care services and the number of occupants in each unit. This will allow municipal and provincial inspectors to ensure that care homes meet provincial safety and maintenance standards and improve overall living conditions for residents.

A requirement of 90 days' notice prior to any increase in the cost of care service and rent costs will also be enforced through the Rent Control Act. We will monitor care service costs annually so that we can take regulatory action if that becomes necessary. So the intent is not to regulate care costs per se, but the Rent Control Act will provide significant consumer protection and empowerment when it comes to care services.

This bill represents protection based on a recognition that care home residents are respected members of our society, an approach that's consistent with the steps we're taking in long-term care redirection, steps towards community-based care and deinstitutionalization.

We recognize that care homes do provide a very vital service to people with different degrees of care needs and that many of these care facilities are run by people with a high sense of responsibility and compassion.

In trying to weed out abuse and to protect the vulnerable, we shouldn't, and we're not going to, put at risk the quality or quantity of Ontario's care home service.

What the government is attempting to do is to achieve a balance, a balance between the need to protect people in vulnerable situations and the need to preserve and improve a service which people in Ontario need.

In preparing this legislation, we carefully considered the relationship of eviction processes to resident and staff security and safety. The Landlord and Tenant Act provides for eviction if the safety of other tenants or staff is or has been seriously affected by the actions of a tenant. A temporary eviction or fast-track eviction process is really not the answer to the problem of residents who threaten others: The court system simply doesn't respond quickly enough.

At the same time, where an immediate danger to other tenants does exist, intervention by physical and mental health professionals or the police must be available. In fact, many current operators of care homes are already operating under the Landlord and Tenant Act by their own choice.

A great deal of deliberation has been entered into before this legislative proposal has been brought forward, both by Dr Lightman in his investigations and consultations and by several provincial ministries after his report was received. We believe the amendments proposed in

this bill are a responsible and necessary response to a key issue: protection of the basic human rights of thousands of people.

There are hundreds of care home operators who've been guided by compassion as well as good management sense. They should be commended for their sense of social responsibility. I know they'll welcome this legislation because now all operators will be working with the same rules.

On the other hand, as the Lightman report has shown, there are other operators who'd rather set their own, quite separate, rules. But what's at stake here are the rights of people who are already vulnerable by virtue of their circumstances.

It's important that this committee sends out one message that is very clear: Issues of basic human rights such as personal safety, security and human dignity are the ground rules for all who live in Ontario.

1420

This bill also addresses serious problems faced by people living in apartments in private houses and in some cases by owners of such apartments.

In the past month we've seen the tragedy that can result from unsafe apartments, and the fact of the matter is that the people who died in those fires might still be around today if their apartments weren't made illegal by some local zoning law, a law that turns a blind eye to the thousands of apartments that already exist right across this province.

It amazes me that some people are claiming that these tragedies are proof that Bill 120 will make a black market situation worse. These are attempts to stand the truth on its head. This bill's purpose is to prevent exactly this sort of tragedy.

Apartments in houses are found right across Ontario, not just in Toronto, and currently we estimate 100,000 of these apartments are now illegal in most parts of the province due to municipal zoning bylaws.

As a result, municipalities have found it difficult to enforce safety standards. In the first place, bylaw officers find that they often need search warrants to get into existing illegal apartments in houses. Tenants and owners are reluctant to open the door to an inspector because they fear that an inspection will result in the eviction of the tenants because of zoning.

Bill 120 contains provisions to make it easier for bylaw officers to obtain search warrants. More importantly, this bill makes apartments in houses a legal use. Owners can open their doors to inspectors without fear of automatic shutdown of the apartment because of the zoning. Many owners have said they would be interested in having a positive municipal inspection report because it improves their ability to obtain a mortgage or insurance and it improves the value of their property.

Similarly, tenants can complain to their municipality when this bill is in place about unsafe or unhealthy housing conditions without facing automatic eviction because of the zoning.

Bill 120 will break what really has been a vicious cycle. The amendments proposed in this bill will enable

home owners living in detached, semi-detached or row houses to create one apartment unit in their house legally, provided they meet reasonable building, fire, property and zoning standards; improve municipal inspection and enforcement powers by making it easier for municipalities to get a search warrant to investigate possible violations of standards bylaws for all buildings, including apartments in houses; give municipalities the option to enter into 10-year agreements with home owners who want to install garden suites or granny flats on their property; make it clear that, for zoning or property standards purposes, it should make no difference whether people who share living accommodation in a single house-keeping unit are related to each other or not.

This bill is not—I want to emphasize this—an attempt to legalize existing apartments in houses which are now substandard. It is not a moratorium. To be legal, any unit, already existing or newly created, must meet provincial health and safety standards. By making apartments in houses a legal option, these amendments will bring them out into the open and enable municipalities to enforce safety standards effectively.

In conjunction with Bill 120, new standards for apartments in houses have been developed as regulations under the Ontario Building Code and are being developed under the Ontario fire code. These standards will address fire safety issues such as smoke detectors, exits and fire separations.

From the point of view of tenants, there are many clear benefits from Bill 120. When apartments in houses can exist legally, tenants can complain to their municipality about unsatisfactory housing conditions and get action without risking eviction because of zoning, and municipal officials will be better able to make sure that apartments in houses are safe for the people who live in them.

Garden suites have particular value in some situations. They allow families to stay together, at least two generations, supporting each other while maintaining their privacy, and they're a solution for many seniors who, as they grow older, find it difficult for various reasons to cope with a large home. They can also help others, such as people with disabilities, live independently with a little support close by.

So garden suites, or granny flats as we know them, will benefit entire communities, especially where institutional facilities are not convenient or aren't available. Overall, it's a way to keep down the costs to society of institutional care.

But I must emphasize that we're not proposing as a province to legalize garden suites either. This legislation will simply give the municipalities the tools they need to approve garden suites on a case-by-case basis. They can enter into agreements with home owners to regulate the installation, maintenance and duration of use of these units.

I want to stress this is a municipal option. This legislation will give municipalities explicit authority to enter into agreements with owners of garden suites, permitting them through temporary zoning for periods of up to 10 years, compared to the current maximum of three years.

Overall, the proposed amendments will support home ownership. Rental income from a second unit in the house can help ease the financial burden of home ownership for people living on fixed incomes or living alone. For many people, the rent from an apartment in their house can make the difference between being able to stay in their own home and having to move.

In other cases, the rental income from an apartment in a house can make all the difference for people wanting to move from renting to home ownership. As home owners bring existing illegal units up to standard or create new units, construction and renovation jobs will be generated, while Ontario's supply of affordable housing will increase at little cost to the taxpayer.

To sum up, this legislation reflects key recommendations in the Lightman report on care homes and the results of an extensive consultation process on apartments in houses. As I did at the introduction of this bill and again at second reading, I'd like to underline the valuable contribution of Dr Ernie Lightman to this legislation. He fought long and hard for the changes to provide protection to people living in care homes. He'll be before this committee tomorrow when unfortunately I won't be able to be here. I'd like to thank him for the excellence of his work and his dedication.

I'd also like to thank the tenant advocates and organizations representing senior citizens and mental health consumers, in particular community organizations such as the Ontario Coalition of Senior Citizens' Organizations, the Advocacy Resource Centre for the Handicapped, the Coalition for the Protection of Roomers and Boarders, the Inclusive Neighbourhoods Campaign and the Canadian Mental Health Association, Ontario division, who have vigorously advocated and supported this bill for some time. They continue to bring to public attention the needs of people whose living situations are the reason for these amendments. I thank them for their compassion and for their caring.

This legislation will take us a step closer towards balancing the rights of tenants, landlords and local communities, rights which up till now have been out of balance as far as residents of care homes and tenants in apartments in houses are concerned. It will mean more jobs and more affordable, healthier and safer housing for thousands of people who live in this province. It's a bill about residents' rights. It's about an idea whose time has come in fact, about action that has been long overdue. Thank you very much.

The Chair: Thank you. Responses by the critics.
1430

Mr Joseph Cordiano (Lawrence): Let me just thank the minister for appearing before us today to make clear or clearer the legislation as presented.

I want to start off by saying that I will attempt and our party will attempt to be as constructive as we possibly can to make what virtually amounts to an impossible situation a positive experience for everyone.

The biggest problem for us with the legislation, Bill 120, as presented, is that it puts together two disparate pieces of legislation, an omnibus piece of legislation

called Bill 120, and attempts to deal with them in the fashion that we see before us. These are two different pieces of legislation, two fundamentally different ideas. If you have difficulty with one set of ideas, then obviously you can't accept the whole thing, or if you have difficulty with the other part of the legislation, you can't accept the whole thing. You have to take it or leave it.

Of course, I would say to the minister that this seems to be the rule around here. We are moving forward with this omnibus style of operation and it's a difficult one to reconcile for us.

Having said that, let me move on to what I think are problems associated with Bill 120 and what I think, at the end of the day, would be useful in terms of the directions that we might move in, in our efforts perhaps to amend the legislation, if indeed that is possible. Parts of the legislation I think would have to be altered fundamentally to do this, particularly dealing with basement apartments, as we see it.

At the end of the day it may be possible to do that. I'm not quite sure at this point. It depends on how far the government wants to move with amendments; I suspect not too far and therefore that's why I'm saying that. I will respect the right of the government to do what it has to do in legislation, but let me say the difficulty for us, as I say, stems from the fact that these two disparate pieces of legislation have been put together as one, and for us that presents enormous problems.

I suspect that the majority of presenters will show us just how different the two bills are at the end of the day. The title, Residents' Rights Act, given to the legislation really represents what we are dealing with, a "one size fits all" approach to everything that will fit everyone in different categories right across the province, in different parts of the province. Quite frankly, we don't believe that this, what amounts to a heavy-handed approach by the government with respect to municipalities, will work.

We in our party believe that there is room for flexibility, that there is room to consider municipalities that are small that cannot deal with the kinds of proposals that are being put forward in the legislation, that it will be rather difficult for some municipalities. The changes to official plans that will have to result will be costly for some municipalities. In fact there will be difficulties all around for those municipalities.

But I think at the end of the day what concerns me about the legislation dealing with basement apartments is that there are no options and that in theory we will see, as a result of this legislation, the end of subdivisions, the end of communities that were built around the notion of single-family dwelling units. That, in theory, is no longer possible after this piece of legislation. That style of living or that form of living will come to an end.

I say to this government that there should be provisions, that there should be flexibility, that there should be an alternative to ending it holus-bolus right across the board with one sledgehammer approach. I think that at the end of the day the vast majority of people in the province will want choice, and this bill precludes that choice from occurring, because in theory every municipality will have to comply, every municipality will at

some point contain some degree of intensification which looks like what's being proposed in Bill 120.

I think there's a middle ground and I believe that the government has not sought that middle ground because its approach is to provide "one size fits all," one sledgehammer approach: "Just do it right across the province, do as we say and there are no alternatives to this, and no flexibility at the end of the day." That is the biggest problem with the approach that the government has taken with the basement apartment section of the bill, which was really Bill 90.

It's unfortunate that we have to deal with both pieces of legislation in the same manner because I believe the second part of the bill dealing with the regulation of rest and retirement homes and bringing those under the Landlord and Tenant Act and under rent review—rent control, if you will; I'm using our old term, rent review. I hasten to add that's no longer the case; it's rent control.

There's a great deal that I could support, that our party does support, about what was brought forward with the recommendations by Dr Ernie Lightman. I said this in the statements in the House. I think our party is very supportive of the general thrust and the direction that has been taken, with some concerns that I think can be addressed. If the minister wants to work constructively with us, I think those concerns can be addressed. I'll allude to those in a moment.

I think at the end of the day the general direction that has been taken by Dr Lightman is something that we on our side of the House support. That's what causes me a great deal of frustration because, on the one hand, I would like to support the general direction of that legislation but I find it difficult to support the entire bill, given what's stated under the section dealing with basement apartments.

Again, I hold out some hope that we may be able to change that; how far in order to satisfy everyone's concerns in our party, I don't know. We'll have to work through that as we move forward in this committee.

Let me deal with some of the sections of Bill 120 that refer to Dr Lightman's recommendations and the concerns that we have. Our caucus is generally concerned that the application of the Landlord and Tenant Act to care homes may in fact restrict staff access to residents such as those in retirement homes. The notice requirements, for example, under the Landlord and Tenant Act have the potential to prevent staff from carrying out daily care for residents. We believe the special requirements of such homes must be taken into account when applying the Landlord and Tenant Act, and I don't believe for a moment that is the case under the legislation as we see it.

I would add that the legislation does not address the basic differences in unregulated accommodation, which ranges from boarding houses to retirement homes. It lumps them together; it deals with them in the same way. It's clear that care services provided to such accommodation vary widely and, as such, the legislation should take these differences into account—fundamental differences: the kind of care that's provided in a rooming house, for example, as compared to what's provided in a rest and retirement home.

Again, there are also legitimate instances in which a resident of a retirement home must be moved from the home. The minister alluded to this in her opening remarks with respect to fast-track removal, the circumstances under which an individual may represent a risk to other residents. It would appear that such a relocation is not easily done under the Landlord and Tenant Act. It's certainly the case—that is not easily accomplished, as the current case exists.

It's interesting to note that the Lightman report recognized the need for temporary relocations and recommended that there be a fast-track mechanism, as the minister alluded to and she rejected, because there are a variety of instances where others are a threat, where an individual may be a threat, to others in the home. I cannot sit here and understand why that is not something that is easily understood. There has to be a clear and easy way to do this, even if it means a temporary relocation. Bill 120 has ignored Dr Lightman's recommendation and therefore there is no adequate mechanism for doing this.

Questions have been raised regarding whether the application of the Landlord and Tenant Act under Bill 120 takes into account the nature of rest and retirement homes. These homes often have contracts with local hospitals to have people stay in their homes for short periods—say up to five days or for a weekend—for respite care. Once again, it's unclear how the Landlord and Tenant Act will apply to such situations.

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It's also unclear under Bill 120 what will happen to those municipalities that have been able to negotiate low rates with retirement homes for social assistance residents. Under Bill 120, there is a potential problem in that these special rates will be tied to specific units in retirement homes rather than to the occupants of these units, which may not always house social assistance recipients. It appears that the retirement home would not be able to convert such a unit to a market unit with correspondingly higher charges. There's an inequity there for the home, and that's something that is not addressed in the legislation.

Bill 120 will prevent eviction for non-payment of care charges. However, the Landlord and Tenant Act allows eviction for non-payment of rent. It is conceivable that under Bill 120 a care home resident could continue to pay for accommodation charges while refusing to pay for care charges. In such an instance, a care home would have no recourse under this legislation and could only resort to suing a resident for non-payment of care charges. Bill 120 sends a confusing message when compared to the Rent Control Act, and that's not saying a whole lot. Under Bill 120 you cannot be evicted if you don't pay your care charges, but under the Landlord and Tenant Act you can be evicted for non-payment of rent.

Furthermore, what happens to the landlord if he discontinues providing care in instances where he is no longer being paid by the resident? To what degree will the landlord be held responsible if the care is not provided, resulting in harm to that resident? The province has said that initially it will not subject care charges to rent control—the minister has stated that clearly in the

House—but that she will monitor the situation. That leaves the possibility open that you will bring these charges under rent control, simply by passing a regulation at some future date. Again, that would not be subjected to the kind of public scrutiny we're engaging in now; that would simply be a regulation that's passed.

In the meantime, the province will not only be keeping track of these charges; as the minister again pointed out, it reserves the right to challenge how rent and care charges are actually appropriated. However, the government seems to ignore the fact that in the retirement home sector there is a 75% occupancy rate, which has created a competitive marketplace that must have competitive pricing in order to attract residents. It completely ignored that.

I'm certain that the presenters will be able to point out examples of how this legislation will not provide the residents of unregulated facilities with the protection they need, the protection this bill purports to provide. I hope that constructive ideas will come forward—as I say, we will be providing some constructive ideas as we move along—to make the bill more responsive to the concerns that have been brought to my attention from various groups and individuals across the province.

Perhaps the most constructive amendment would be to deal with basement apartments and the rent regulation of residential facilities in two separate pieces of legislation. But I'm kind of whistling in the wind because this is a fait accompli and we're going to deal with it as one piece of legislation. But that is quite simply, Minister, the most frustrating thing I have to deal with. Coming to grips with that is not easy for us. You will, of course, have no sympathy for that view, but quite frankly a lot of people out there feel the same sorts of frustration that I do.

Given that sense of difficulty, I would hope that, at the very least, we can make amendments that would be accepted and that would move some measure towards rectifying those concerns and making the legislation as effective as possible and, at the end of the day, if possible, continue to allow for the choice that people rightfully deserve in the province: the choice of where they live and the choice to live in single-family dwelling units to continue to be a choice, to continue to be something that is possible. When we pass this legislation, and inevitably it will pass, there will no longer be that choice for people.

Mr David Johnson: As was mentioned, Margaret Marland unfortunately is ill today, and she would be giving this opening statement on behalf of the Progressive Conservative Party. The statement was prepared in conjunction with her office and my office, but to give credit where it's due, the final version did come from her office. However, I'll do my best.

Before addressing the substance of the bill, I wish to express disapproval with regard to the fast-tracking of Bill 120 through the legislative process. I might say that in coming into the room today, I have had similar expressions from people representing other groups that are most concerned that they're just finding out within the past week that in fact this bill affects their area of involvement and they haven't had an opportunity—even

though the minister has indicated that quite a number of groups apparently have had an opportunity to have input, many groups haven't.

After second reading last month, we now have only one month of public hearings and one week for clause-by-clause analysis of an omnibus bill. Even if the government had dealt solely with Bill 90, which is the former version, the accessory apartments and garden suites legislation, this allotment of time would have been insufficient, even for that, for due consideration and analysis. Now that measures to regulate residential care homes have been combined with the apartments-in-houses measures to form an omnibus bill, five weeks of committee deliberations are simply inadequate.

There are several individuals and organizations that would like to make oral presentations but cannot do that because of the time constraints. I realize that what's going to be said is that they can submit written briefs, but considering the large number of submissions that we're going to hear, the public knows that a written report will not receive the same attention as an oral presentation to this committee and it's most important that all be allowed to be make that oral presentation.

Moreover, to allow just one week for clause-by-clause consideration of the bill suggests that the government has already decided that whatever amendments the opposition parties put forward will not receive government support.

Now I turn to the concerns about the substance of the bill itself, Bill 120. First I will address the measures that will allow one apartment as of right in all detached, semi-detached and town houses unless they are on a septic system. Later I will address the measures that will regulate tenancy in residential care homes.

To begin, let us consider the premise of allowing accessory apartments as of right rather than through the current tried-and-true method of municipal zoning bylaws. Just think about what this means. When Bill 120 becomes law, there will be no such thing as a neighbourhood of single-family homes in all of Ontario. This bill will result in the duplexing of Ontario.

The NDP administration is moving towards centralized Big Brother control of our communities rather than local autonomy at the municipal level. It is also imposing, although we've heard to the contrary, a made-in-Toronto solution on other localities where shortages of affordable housing do not exist or where the accessory apartment solution is simply inappropriate. No longer will local government, the level of government that is closest to the people, be able to plan the future of residential neighbourhoods. Moreover, by changing the rules after the fact, the government is, with one swipe, erasing decades of municipal planning.

The government is also invalidating the municipalities' considerable effort and expense to implement the Land Use Planning for Housing policy statement that sets goals for intensification but which rightfully left it up to municipalities to decide how to meet these goals.

I find it also ironic that the government is even ignoring the recommendations of its very own Sewell commission. Those recommendations would be that the

province should set the policies but let the municipalities decide how to implement those policies.

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I was most concerned, Madam Minister, that recently you were quoted in the media saying that single-family zoning is snob zoning. I hope that in saying that and recognizing that there are hundreds of thousands, if not millions, of people in the province of Ontario who have chosen to buy single-family homes, who have sought out this sort of lifestyle—we're talking about not just rich people, but about middle-class and poor people; we're talking about all people—we are not labelling them as snobs. It gives that appearance.

Home owners are worried that Bill 120 will devalue the biggest investment of their lifetime. They paid a premium for a single-family home and they expect at least to have a say in changes to the zoning in the neighbourhood. Indeed they have always been told that they would have a say and that their voice would be heard when zoning was changed in the neighbourhood, but now that's not so. Now we have a dictatorial approach and the municipalities are wondering what will be the next planning decree from this government to the municipalities and to the people of Ontario.

Home owners' concerns are valid and real. Several presentations to this committee, I'm sure, will come from residents and municipal officials in areas where accessory apartments have caused serious problems. Many of these problems, for instance, such as poor maintenance, parking problems, too many tenants in a unit, excessive noise and property standards violations, could be largely prevented by restricting accessory apartments to owner-occupied homes. My guess is that when we trot out statistics that show that a certain percentage of people support this concept, people are largely commenting on owner-occupied premises. So far this government has refused to consider this restriction, but we will none the less present an "owner-occupied" restriction as an amendment to the bill.

Having looked at the implications of as-of-right accessory apartments for home owners, let us also consider the implications for tenants. How are we going to know that as-of-right accessory apartments will be safe, decent housing? You do not plan to mandate the inspection of accessory apartments. You will not establish a registry of accessory apartments for the use of bylaw enforcement officers or fire or police departments. Your power-of-entry provisions, which have long been one of the main problems that municipalities have dealt with in this area and which require the obtaining of a search warrant, are still woefully inadequate and won't work, according not only to myself but to municipal officials and fire chiefs.

The bottom line is, will these apartments be safe? Unfortunately, it's been already alluded to that on New Year's Day there was a tragic basement apartment fire in Mississauga which unfortunately resulted in two deaths. Three fire chiefs, including Fire Chief Hare of Mississauga, will be making presentations to this committee. I urge that we listen to their very serious concerns and respect their recommendations to amend Bill 120 to

improve the powers of entry and to establish municipal registries of accessory apartments.

Bill 120 will also result in a downloading of costs from the province to local levels of government, quite possibly resulting in property tax hikes at the same time, of course, as municipalities are already trying to eat the expenditure control plan and the social contract. For example, municipalities will be required to change official plans and zoning bylaws. This is to comply with this bill. This is a very expensive proposition, and a frustrating exercise as well because part of the process will be that they invite the general public to a public hearing.

Undoubtedly there will be many comments that will be heard expressing concerns about the bill, but the municipalities will have no recourse. The municipalities will be put in the very awkward spot of having to go through this process but be unable to do anything about the concerns that are expressed to them. Some of them are even suggesting that the government should conduct those hearings.

The government claims that the use of municipal and educational services by residents of accessory apartments will not increase since the main effect of the bill will be to legalize the apparent 100,000 illegal accessory apartments that already exist, but many municipalities simply do not believe that this is the case.

Their concern is that it will be quite likely that Bill 120 will promote absentee owners, for example, to duplex properties, strictly for investment purposes. This, I can say from personal experience in the past, has been where the bulk of the complaints are heard and where the bulk of the property standards problems arise, and this could well be encouraged under Bill 120.

There will be no way to ensure that property tax assessment of a home containing a basement apartment is any higher than the assessment of a similar house with a finished basement that is not a separate apartment. The province has also made it clear that it will not allow development charges for the creation of accessory apartments in existing homes.

If there are additional costs for the services to the residents of accessory apartments, municipalities and school boards will have to pass on those costs in two ways: one, by increasing property taxes or, two, by increasing development charges for new homes. Either option is obviously unacceptable at this point in time within our fragile economy.

Think of the other costs that municipalities will have to incur. There will be increased demand for inspections to ensure compliance with the building and fire codes and other property standards. Home owners may need these inspections for insurance or mortgage purposes. Some tenants will want to ensure that their apartments are up to standard. But who pays for the inspections? The municipalities; in other words, the property taxpayer.

Similarly, larger bureaucracies may be needed to process the search warrants that will be required under Bill 120 for official gain right of entry to apartments when violations of property standards are suspected. Again,

the property taxpayer will have to foot the bill. One way to offset the inspection costs would be to let municipalities charge the home owner for inspection, since the home owner will benefit from the future rent revenues. Inspections could be mandated if there were adequate resources to pay for them.

Having considered some problems that arise from allowing accessory apartments as a right, I want to mention briefly some difficulties that occur because legal apartments in houses fall under the Landlord and Tenant Act and the Rent Control Act. Few home owners, I might say, are very expert in the landlord and tenant law. Those who rent large apartment buildings, I'm sure, are considerably more sophisticated, but many will rent out apartments without fully understanding their rights and responsibilities as landlords.

When accessory apartments are allowed as of right, more home owners will consider them as a way to help pay for their mortgage of course, and that's already been mentioned. Indeed, more people may actually be coerced into purchasing a home who may be dependent upon some of the rental income to pay for the mortgage.

What happens if the tenant does not pay the rent? Eventually the home owner can serve an eviction notice but, if the tenant decides to protest the eviction and take the case to court, it could be months before the home owner could evict the tenant. That could be enough time for a home owner to default on the mortgage.

Indeed, there was a case in the municipality of East York I'm sure you're aware of, Madam Minister, within the last couple of years that resulted in the home owner actually being arrested. Because she was so distraught with the fact that the tenant wasn't paying the rent and with regard to actions that were being taken in the basement in her house, she perhaps said some things that she shouldn't have said, but at any rate she ended up being arrested. She simply didn't understand all the implications, I guess, of the Landlord and Tenant Act.

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As for rent control, if a home owner undertakes necessary capital expenditures for an accessory apartment, the total rent increase cannot be more than three percentage points above the annual rent increase guideline. Will home owners realize this and ensure that they have made the necessary renovation prior to establishing their initial rent? If they don't, they will find that their rental revenues do not meet their costs. Moreover, future purchasers of a house containing an apartment will be restricted by the levels of rent set by previous owners, even if those levels are far less than what the market would bear.

Will rent control in the end dampen the availability of accessory apartments, just as it has led to an inadequate supply of rental apartments in larger buildings? It is possible that the government is shooting itself in the foot in terms of increasing the supply of affordable housing. Indeed, it's interesting that in many cases the basement apartments are quite often, in the older sections, located in basements that do not have, for example, the kind of ceiling height we would legislate today.

I wonder what would happen in the case of a senior citizen, for example, where a tenant has complained about perhaps the condition of the apartment, then a municipality is allowed to come in and do a check and it's found that the ceiling height or something doesn't quite meet the new standards that are being brought in? What will happen in that case?

It doesn't necessarily have to be a senior citizen; it can be somebody who may be short on funds. They'll have two choices: Either they can go to some considerable expense to correct the situation—and if the situation, for example, deals with a basement height that's too low, that could be a considerable expense—or they can choose to close down the rental unit, I assume, and evict the tenant.

In many cases, particularly with seniors, they would not want to go through the expense or the trouble to do a major renovation, and my guess is that in that case a considerable number of units, units that are serving today quite adequately, could well be shut down.

To try to get on with it, I'd like to consider the part of the bill that will apply the Landlord and Tenant Act, the Rent Control Act and the Rental Housing Protection Act to residential care homes.

Something obviously must be done to prevent situations such as the most unfortunate death of Joseph Kendall at the rest home in Orillia. While Kendall was beaten to death by another resident, he was also, as we know, malnourished and overmedicated. The inquiry showed that he and other residents of the home had been victimized by its owners and operators. The Lightman commission found evidence of terrible conditions, abuse and poor care in other unregulated situations.

However, I must say that the majority of owners and operators of residential care homes are reputable and fill an important service gap between home care and extended care. The homes that belong to the Ontario Residential Care Association are self-regulating and meet high standards.

The ORCA has called for province-wide standards of care and a formal disputes resolution system for five years. Likewise, since 1989 the Progressive Conservative caucus has called for legislation to regulate minimum standards of care and service in Ontario's rest homes.

However, that is not what Bill 120 delivers. This bill regulates tenancy while leaving the door open for the future regulation of care by the Ministry of Housing, and this is totally inappropriate. The regulation of care, not tenancy, would be an appropriate solution to the problems that exist in this sector. Moreover, standards of care should be regulated by the Ministry of Health, not by the Ministry of Housing.

Bill 120 fails to differentiate between residential care homes and boarding houses. The regulatory needs of boarding houses, which provide room and board but not formalized care, are very different from those of residential care facilities, which also assist with things such as bathing, eating, dressing and medication. There will be a great many problems when the Landlord and Tenant Act and the Rent Control Act apply to residential care homes. I know the ORCA will be presenting its views to the

committee in that regard. Under the Landlord and Tenant Act staff cannot enter a resident's home in non-emergency situations without 24 hours' notice, unless the occupant gives consent. This is an impossibility where residents are disoriented or are unable to communicate their wishes.

Problems will arise if patients need to be transferred to a different floor that would better deal with their care needs. The complications under the Landlord and Tenant Act for transfers are enormous.

Bill 120 does not include any amendments to the Landlord and Tenant Act to facilitate the speedy eviction of residents whose care surpasses what the home can provide or who pose a threat to other residents and staff.

Nor will Bill 120 recognize short-term stays such as respite care or the contracts between residential care homes and municipalities to house general welfare recipients who need housing combined with 24-hour supervision and care.

The exemption from the Landlord and Tenant Act for contracts under six months will not apply unless care is rehabilitative or therapeutic and the building is not the principal residence of the majority of its occupants.

The Landlord and Tenant Act allows tenants to sublet their premises. Such a provision is totally inappropriate in a care facility where admissions are based on medical assessments to ensure that the facility can adequately meet the needs of the resident.

As if these problems aren't enough, more problems will arise from the application of the Rent Control Act. A residential care home will not be able to evict a person for non-payment of care charges. Contracts to ensure the payment of rent and care charges should be mandated in this legislation.

Another problem is that many residential care homes offer below-market rents when they first open in order to attract residents. In homes where there are a substantial number of residents still paying the introductory rates, rent control would permanently keep these rates below market levels, forcing operators into an untenable financial position in the long run.

This brings me to the biggest argument of all against rent control: It doesn't make housing more affordable because it results in a shortage of supply, and I wonder why, when our population is aging, when the public resources for long-term care are sorely lacking and when we desperately need residential care, the government would implement legislation that is a disincentive to establishing residential care homes.

Lastly, I want to devote a few moments to the implications of applying the Rental Housing Protection Act to residential care homes.

This act, which is administered by the municipalities, should not apply to residential care homes for several reasons. First, municipalities will face an additional workload associated with inspections and the processing of Rental Housing Protection Act applications, yet another example of the downloading in the bill.

But just as importantly, the application of the Rental Housing Protection Act does not protect housing supply.

By effectively prohibiting the demolition or conversion of care facilities, the bill will be a supply disincentive. It is a serious invasion of property rights, especially for existing homes where the home was purchased before the act applied.

Obviously this government is finally driven by its ideology. The government believes there is no role for the private sector in the provision of care and an attempt is being made to drive residential care homes out of business, just as they want to shut down the private nursing homes.

We will all suffer from this stupidity, it says here—

Mr Cordiano: Remember, those are Margaret's words.

Mr Bernard Grandmaître (Ottawa East): You're not responsible.

Mr David Johnson: —because we will have fewer supportive housing options when we need more than ever before, and we will address the concerns that have been raised today with amendments when this committee examines Bill 120 clause by clause.

Mr Cordiano: On a point of order, Mr Chairman: Not to offend my good friend and colleague Mr Johnson, but probably because Margaret was going to deliver this speech, as is her customary way, she has taken a little extra time, I would say. I did not go into a great deal of detail in some of the areas we wanted to explore, and I would like to have an opportunity to do that at some point if you would deem it appropriate, given that the opening remarks I think went a little further. I thought there was a limit that was agreed to in terms of opening statements.

The Chair: My instructions, according to the subcommittee report, were to allow the minister and the two critics each 20 minutes. I would confess that I did not keep close track of the time as I believe both the minister and yourself were less than 20 minutes. I'm not sure what Mr Johnson exactly was.

Mr David Johnson: I was right on 20.

Mr Cordiano: That's fine.

The Chair: As you know, Mr Cordiano, these hearings are to go on for a number of weeks and there will be clause-by-clause examination of the bill for a space of one week during the intersession. I would suggest there will be a number of opportunities for you to place your concerns and your position. Thank you.

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The next order of business is a technical briefing by the ministry. We will ask those from the ministry to introduce themselves. I see some familiar faces, but I will allow the introductions to be made by each of you.

Maybe we should just take a couple of moments while the room clears. Order. Would those intending to carry out private conversations please do so outside of this room. I think the dust is settled now.

Ms Anne Beaumont: Thank you, Mr Chair, and good afternoon to the committee. I'm the assistant deputy minister of planning and policy in the Ministry of Housing.

I want to thank you for inviting us to make a presenta-

tion on Bill 120 today and, as invited, I'll introduce my colleagues here with me. On my immediate right is Janet Mason, who is the director of the housing policy branch, and Janet will provide you with an overview of the care homes provisions in the bill. On Janet's right is Ann Borooah, director of the housing development and buildings branch, who will speak to the apartments-in-houses provisions. On Ann's right is Michael Lyle, a solicitor with our legal branch, who will provide a brief summary of the structure of the bill.

I'd also like to introduce to the committee a number of other staff who are here today: Tom Melville, who is a solicitor with the Ministry of Municipal Affairs, legal branch; Rob Dowler, manager of the planning and buildings policy section; James Douglas, who is a policy adviser with that section; Scott Harcourt, manager of the existing stock policy section; and Terry Irwin, a senior policy adviser with that section. These people will be available to the committee to help it with its deliberations over the coming weeks.

Our presentation this afternoon should last about three quarters of an hour, and we are now distributing some material to help you follow the presentations. You may find the whole package clearer if you hold questions to the end of the full presentations, but we are of course in your hands on that.

Let me start by describing the process that gave rise to the care homes provisions in the bill. In November 1990, following the death of a rest home resident in Orillia, the government asked Dr Ernie Lightman to "report on the level of care and living conditions of people living in unregulated rest homes."

The Lightman commission began its work in January 1991 and produced a discussion paper in March of that year as a basis for consultation. He received over 230 written submissions in response to that paper. The commission released its final report in June 1992. That report contained 148 recommendations.

The following month, July 1992, the Ministry of Housing was asked to coordinate the development of the government's response to the Lightman commission report. An interministerial committee was set up to analyse the report and bring forward recommendations for action. The care homes part of the bill is the result of that interministerial committee's work. I'd like to thank the ministries of Health, Community and Social Services, Attorney General, Citizenship, Municipal Affairs, the Solicitor General and the Ontario women's directorate for their contribution to the legislation through that committee.

To quote the commission's report, "The principal aim of this inquiry has been to redress structural imbalances between operators and residents, to empower vulnerable adults who live in unregulated settings and to assist them to assume control of their lives."

The commission looked at several ways of doing this and settled on a consumer-centred empowerment approach to resident protection rather than a comprehensive regulatory model. Central to this is the notion that the place where vulnerable tenants live is their home and that rest homes, as Dr Lightman refers to them, or care

homes, as we understand them in this bill, should be considered permanent residences with a component of care, rather than temporary places to live or low-level institutions.

A major component of the empowerment approach is the need to give residents of care homes rights and the means to achieve those rights. This is the major rationale behind Bill 120, which extends tenant protection legislation to care home residents so that these residents have the same rights and protections as other tenants in this province.

This approach is consistent with and reinforces major trends in our society about how we treat vulnerable people. There's a general movement towards integrating such individuals into the community and providing them with the same rights and services as other members of society.

Bill 120 reflects the major philosophical direction and the major recommendations of the Lightman commission report, but as the interministerial committee began its work, it recognized that many new program initiatives and legislative changes had either taken place or were imminent since Dr Lightman had made his recommendations. These initiatives necessarily influenced how we implemented the specific recommendations in his report. They changed the environment within which we operated and offered other options for achieving the same objectives.

For example, Dr Lightman recommended a rest home bill of rights and tribunal, with the objective of making clear what the rights of rest home residents are and providing them with an appeal procedure to protect those rights. These recommendations reflected his analysis that no mechanism existed at the time to achieve this. However, many of the rights which he recommends being set out in the bill of rights are already protected in various pieces of legislation such as the Human Rights Code, the Landlord and Tenant Act and the Rent Control Act.

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Since the time that Dr Lightman did his work, we've seen the proposed development of advocacy services under the Advocacy Act, the clarification of rights under the Substitute Decisions Act and the Consent to Treatment Act. These pieces of legislation will, when fully implemented, provide a much stronger environment for vulnerable individuals to understand, to pursue and to protect their rights. So we recommend it against the additional cost and bureaucracy of the bill of rights and the tribunal.

Similarly, we evaluated Dr Lightman's recommendations on standards of care in the light of a number of new government initiatives. In particular, the implementation of the Regulated Health Professions Act, which will enhance the capacity for self-regulation of the health professions, and the work of the Drug Programs Reform Secretariat, which is addressing issues such as over-medication and medication practices, will lead to improvements in standards of medical care in care homes.

The significant increase planned in the availability of community-based services under long-term care

redirection also changes the environment for care and provides for higher levels of choice for consumers.

All of these improvements, combined with Landlord and Tenant Act coverage, Rent Control Act coverage and the Advocacy Act, result in an environment in which vulnerable adults have more choices and more protections against abuse and poor care.

Bill 120 also contains a provision that care home operators provide tenants with a package of information setting out what care is being provided, the costs of that care, staff qualifications and other information, and this also will strengthen consumer protection significantly. So for these various reasons, we advised against specific regulations in standards of care in care home settings.

Another example of an approach which is somewhat different from Dr Lightman's is the registration of rest homes. He recommended a new system of municipal registration because he was concerned that municipal property standards, fire safety and public health inspectors cannot enforce existing laws and standards because they don't know the location of care homes. But with the extension of the Rent Control Act to care homes, they'll be registered through the rent registry, which will achieve the same objectives of identifying them as municipal registration would.

Another area where the government has taken a different approach from Dr Lightman is in the area of price control of care services and delinking of care and accommodation. Dr Lightman recommended that rent control coverage be extended to all mandatory services offered by the care home operator but that optional services be exempt. If this approach was adopted, landlords may be likely to define all care services as optional and therefore removed from rent control, yet the reason most people move to a care home is that they want to be certain that services are available to them.

Bill 120 takes a different approach, for a number of reasons. We were very concerned about the practicality of applying rent control to care service costs, which vary, as the minister said in her presentation, according to the health and needs of each individual from time to time.

We were concerned as well about ensuring the continued ability of operators to provide the full range of care and personal services to their residents, and recognize that to do this there is a need for economies of scale and for cross-subsidization.

For all these reasons, rent control coverage is extended by Bill 120 only to the accommodation portion of care home costs and there is no prohibition of linking care and access to tenancy. But we have inserted what we believe is a strong alternative protection against economic eviction and rent gouging.

Under Bill 120, non-payment of care services is not a ground for eviction as is non-payment of rent. We provide for the ability to extend rent control coverage to care service costs at a later date if prices rise in a dramatic way. We believe that this is a moderate approach to delinking of care and accommodation. It lets us move towards more consumer empowerment while ensuring the viability of private care homes.

Let me turn now to the apartments-in-houses provisions in the bill. The province has published a large body of research on this issue since the early 1980s, when an 11-volume study of residential intensification was jointly prepared with AMO, the Association of Municipalities of Ontario. This and later studies have generally concluded that residential intensification, and in particular apartments in houses, can be an excellent response to three of the demographic trends facing Ontario.

Firstly, households are getting smaller. In 1961, the average household size was 3.7 people. In 1991, it was 2.7 people.

Secondly, with an increasing number of smaller households and empty-nesters, a large number of houses have extra space. For example, the number of dwellings with six or more rooms occupied by two people increased by over 190% between 1971 and 1991.

Thirdly, there's a persistent need for affordable housing for renters and for first-time home buyers, not just in Toronto but in many areas across Ontario. To illustrate this, in early 1993, more than 60% of renters could not afford to purchase a modest home in London, Ottawa, Sudbury or Toronto.

Given these trends, it's not surprising that we find evidence of support for allowing owners of houses to convert extra space into a second unit to rent out. A Focus Ontario poll taken in the fall of 1992 found that 70% of people in Ontario polled supported allowing owners to have a second unit. Municipal polls have yielded similar findings.

As well, the fact that so many apartments in houses already exist is also evidence that this form of housing fills a need. We estimate there are approximately 100,000 illegal apartments in houses across the province, more than half of those being outside Metropolitan Toronto.

Studies have shown that the major obstacle to the creation of legal apartments in houses is municipal zoning. In response to this, the province has provided grants to assist municipalities to conduct planning studies to address the issue of apartments in houses and intensification.

The Ministry of Housing has provided financial incentives to owners interested in adding an apartment through the add-a-unit and convert-to-rent programs. The Housing policy statement that was released in 1989 required municipalities to amend their official plans and zoning bylaws to allow apartments in houses. In spite of all of this, this form of housing remains illegal in most neighbourhoods today.

This issue was addressed also by Dr Lightman in his work. He noted that apartments in houses provide "an important source of inexpensive housing even in those communities where municipal zoning rules render them illegal." He found that this illegal status made it difficult for tenants in those units to exercise their rights to a safe and secure home under the Landlord and Tenant Act and under other legislation.

The commission expressed strong support for the provisions in the Housing policy statement, which suggests that municipalities allow apartments in houses as

of right in appropriate zones, but noted that few municipalities had met this requirement, even though the deadline for the priority areas in the province was the summer of 1991. The commission therefore recommended that the government amend the Planning Act to make accessory apartments an as-of-right use in zones where residential uses are permitted.

The bill before you implements this recommendation by allowing one self-contained apartment in a house, provided that reasonable building, fire and planning standards are met. To go together with the legislation, new standards are being developed as regulations under the fire code and the Planning Act and were issued in the summer of 1993 under the Building Code Act.

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To further ensure that units meet standards, Bill 120 has provision to improve powers of entry for property standards and zoning officers. This is in addition to the existing very broad powers of entry available to local fire officials.

The bill also contains two provisions related to other forms of small-scale residential intensification, that is, a clarification to the Planning Act to indicate that bylaws should treat unrelated persons who form a household no differently than they treat a family household and, secondly, there are permissive provisions in the legislation that will help municipalities regulate garden suites, or granny flats, on a case-by-case basis.

Ann Borooah will provide more details on the apartments-in-houses provisions later in the presentation, but I'm going to turn over to Janet Mason to take you through the proposals to implement changes to the legislation dealing with tenancy law as it applies to care homes.

Ms Janet Mason: I'm the director of the housing policy branch at the Ministry of Housing. I'd like to describe briefly the key features of the care home provisions of Bill 120. I will also address some of the major issues which have been raised to date in the discussions about the bill.

First, let me describe briefly what is meant by the term "care homes." It refers to both private and publicly funded permanent accommodation which offers an element of care, but not a high enough level of care to be licensed under nursing home or other standard-setting legislation. This could be a private retirement apartment complex which provides care services, rest and retirement homes, boarding houses which provide care and non-profit housing which provides support services.

As noted previously, the care home provisions of Bill 120 amend three statutes: the Landlord and Tenant Act, the Rent Control Act and the Rental Housing Protection Act. Bill 120 extends Landlord and Tenant Act protection to persons receiving care. This is done by eliminating or modifying three exemptions which now exist in the Landlord and Tenant Act.

First of all, the existing provision in the act which exempts premises occupied for the purposes of receiving care has been deleted. At the present time, most private retirement homes and care homes are exempt from the

Landlord and Tenant Act under this exemption.

Second, the number of exempted statutes in the Landlord and Tenant Act is being reduced from 14 to 10. At the present time, many non-profit and charitable care homes are funded under a variety of provincial government statutes and are exempt from the Landlord and Tenant Act on this basis. Under Bill 120, those statutes which provide funding mechanisms only and do not set standards or regulate programs are removed as a basis for exemption.

This means accommodation funded under the Ministry of Community and Social Services Act, the Ministry of Health Act, the Homes for Special Care Act, the Homes for Retarded Persons Act and most accommodation under the Developmental Services Act will no longer be exempt. Those 10 statutes which remain as a basis for exemption are those, such as the Nursing Homes Act and the Public Hospitals Act, which govern institutional settings.

Finally, the current exemption in the Landlord and Tenant Act for rehabilitation and therapy has been significantly narrowed. Up until now, operators have frequently hidden behind this exemption when in fact little rehabilitation and therapy is provided. In future, to qualify for this exemption, there must be agreement between the landlord and tenant that the occupancy is for a specified length of time or until the objectives of the program have been met or cannot be met. As well, the accommodation must be located in a building in which the average length of stay does not exceed six months and is not used by the majority of its tenants as their principal residence.

By extending the Landlord and Tenant Act to care homes, full provisions under part IV of the act will apply. This means that all the rights, obligations and responsibilities set out in the act for landlords and tenants will apply. This includes rules for access and privacy, notice provisions, responsibilities for repair and maintenance and termination procedures.

The right to privacy under the Landlord and Tenant Act will mean that a landlord can no longer enter a tenant's unit whenever he or she wishes. Some operators have expressed concern that they will not be able to provide care adequately to residents under these rules.

Access provisions will have to comply with those set out in the LTA. However, many private and non-profit operators already successfully provide care for tenants under these provisions. For many situations, the 24-hour notice provision is appropriate. The landlord may also enter the premises as long as the resident consents at the time of entry.

Concerns have also been raised about access to tenants' apartments in emergency situations. In cases where there is an emergency, 24 hours' written notice is not required.

Eviction procedures set out under the LTA will also apply to care homes. There have been demands for a fast-track eviction process allowing for the temporary departure of the resident. This is because of the concerns over potential danger to other tenants and staff.

The difficulty with the fast-track eviction, however, is that an application to court for temporary removal would take time to resolve because due process must be observed. It would be unacceptable to remove a tenant, even temporarily, based solely on a landlord's request.

It is also unacceptable to provide a different standard of protection to persons simply because they receive care. There is no evidence that tenants in these situations are more difficult or present more of a danger to other tenants than tenants in regular, permanent rental accommodation.

Questions have also been raised about the potential difficulty of moving tenants when their care needs increase and can no longer be met by the care home operator. However, in our discussions with operators it is clear that eviction is not the answer in these cases. Operators work with health professionals, clergy and family members to find an appropriate solution to these problems in a way which does not infringe on the rights of tenants.

As mentioned by Ms Beaumont, it should be noted that under Bill 120 care service charges are not considered rent under the LTA. As such, a landlord will not be able to evict a tenant on the basis of failure to pay for care services. If a tenant cannot or does not pay for care services the landlord's remedy will be through the courts.

The Landlord and Tenant Act will apply to care homes once Bill 120 receives royal assent. Bill 120 extends rent control protection to care homes in much the same way the Landlord and Tenant Act does. As in the LTA, the exemption for receiving care has been eliminated from the Rent Control Act. The exemption for rehabilitation and therapy has also been restricted in the same way that it has in the Landlord and Tenant Act.

Finally, the list of exempted statutes has also been reduced. However, in the RCA, the list of statutes no longer exempt are only the Ministry of Community and Social Services Act and the Ministry of Health Act. This list is not quite the same as in the LTA because the criteria used to determine whether a statute should provide exemption from the Rent Control Act is whether it provides alternative price control mechanisms.

The extension of rent control to care homes applies only to the accommodation component of total charges. Charges for care services and meals will not be subject to price control. In covering the accommodation component of care homes, all of the provisions related to rent control will apply. These include notices of rent increase, the rent control guideline, landlord and tenant applications, maintenance provisions and rent registry provisions.

While the bill does not provide for care services and meals to be brought under rent control, operators of care homes will be required to disclose certain information to residents. Prior to entering into a tenancy agreement, a new tenant must be provided with an information package which will set out information about care services and meals that the landlord provides. Increases in rent and care services and meals cannot be taken until the landlord has provided this information package.

The landlord will also be required to give a 90-day

notice to the tenant before increasing charges for care services or meals. Increases taken without proper notice will be void and rebateable under the act.

There is a concern on the part of the government that tenants of care homes not receive some of the large increases they have experienced in the past. For this reason, Bill 120 provides for regulation which will allow charges for care services and meals to be covered by rent control if this occurs. The Ministry of Housing will undertake annual monitoring of care service charge increases to determine whether there are excessive increases warranting the regulation of these charges.

Like landlords of other residential complexes, landlords of care homes containing four or more units will be required to register care homes with the rent registry. For the most part, landlords of care homes will be required to register rents charged as of November 23, 1993. They will be required to register the total amount charged for accommodation, care services and meals as well as the number of people occupying each unit. In order to assist rent officers in making determinations on the allocation between accommodation and rent, regulations will be provided.

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Rent control provisions will apply to care homes on the date of first reading of Bill 120. This means that rent regulation will apply as of November 23, 1993. The reason it is effective as of this date is to prevent landlords from increasing rents before the bill is passed in order to set a higher maximum rent.

Finally, coverage of the Rental Housing Protection Act will be extended to include care homes in the same way that rent control does. Care homes will be included in the definition of "rented residential premises" under the RHPA. The bill clarifies that premises which are exempt from the RCA because they are subject to one of the statutes cited in that act or because the premises are occupied solely for rehabilitation and therapy are not residential premises for the purposes of the RHPA.

Municipal approval will be required in any municipality in the province to demolish, extensively renovate or repair a care home or to convert a care home into another type of rental property or non-rental use. This recognizes that vulnerable individuals must be protected in municipalities of all sizes.

Because the government is also concerned with protecting the stock of regular rental accommodation, municipal approval will be required in municipalities of 50,000 or more to convert rental property into a care home. The Rental Housing Protection Act will apply to care homes once Bill 120 receives royal assent.

I'll now turn you over to Ann Borooah, who will take you through the details of the apartments-in-houses portion of Bill 120.

Ms Ann Borooah: I am the director of the housing development and buildings branch in the Ministry of Housing. As Janet indicated, I'd like to provide you with an overview of the apartments-in-houses portion of the bill and then to discuss some of the issues which have been raised during our consultations.

The first thing the bill does is to make an apartment in a house a legal use under municipal bylaws as long as the unit meets reasonable building, fire, zoning and property standards; the unit is located in a detached, semi-detached or row house in areas permitting residential use; and the unit is not on a private septic system.

I should mention as well that Planning Act regulations will be developed which will set out caps on property and zoning standards which municipalities may apply to apartments in houses, such as caps on the number of parking spaces a municipality can require.

In addition to the legislative provisions in Bill 120, regulations under the building code and the fire code will establish uniform fire safety standards for apartments in houses.

The second thing the bill does is to simplify the process for enforcement of municipal zoning and property standards. To achieve this, the Planning Act would be amended to remove the requirement to identify what evidence will be seized as a condition of obtaining a search warrant.

For example, it is currently difficult to obtain a search warrant to investigate alleged property standards or zoning offences in cases where the offence involves issues such as an inadequate ceiling height or a cold unit. Neither of these things of course can be seized or produced in court.

The powers-of-entry provisions to be added to the Planning Act are similar to the current provisions in the Building Code Act and the Rent Control Act. It should be noted, though, that the amendment retains generally accepted protections of privacy for people in their homes. In cases where bylaw officials are denied entry by the occupant, it will still be necessary for a municipal official to obtain a search warrant and show reasonable grounds to believe that an offence has occurred. I should also point out that the amendment does not affect the already broad powers of entry provided to fire officials under the Fire Marshals Act.

The third thing the apartments-in-houses amendments do is clarify the intent of the current section 35 of the Planning Act, which now states that zoning should not distinguish between people based on whether or not they are related to one another. This existing section of the Planning Act is the result of a private member's bill which was passed with all-party support in 1989.

Bill 120 clarifies this section of the Planning Act to indicate that zoning and property standards should not treat the occupants of a house differently based on whether or not they are related to one another, and neither should they treat single people who share a house as a household any differently than family households.

The fourth and final objective of the apartments-in-houses portion of the bill is to provide some optional legal tools for municipalities that are interested in accommodating garden suites. Garden suites are separate, portable cottages typically located behind or beside an existing house. Bill 120 gives municipalities authority to permit garden suites through a temporary-use bylaw for a period of up to 10 years. It also allows municipalities

to make the bylaw conditional on a municipal agreement with the owner of the garden suite. The agreement could specify such things as the name of the party occupying the garden suite. It could also set out provisions for relocation, performance bonds and a range of matters.

There are four issues which have been raised during the consultation on apartments in houses which I would like to respond to today.

First, what will Bill 120 do to ensure that existing and new apartments in houses meet fire, building and property standards? The bill does four things to address this issue.

In conjunction with Bill 120, new standards specifically for apartments in houses are being developed as regulations under the Ontario Building Code and the fire code. These standards will regulate fire issues such as smoke detectors, exits and fire separations. The building code changes came into effect last July and fire code changes will be proclaimed after Bill 120 is approved.

By making apartments in houses permitted uses under municipal zoning, tenants are in a better position to complain to local authorities about substandard conditions, and therefore exercise their right to a safe unit. Tenants in illegal units are reluctant to do this for fear that complaints will result in their eviction.

As well as the legal responsibility to keep units up to fire and building code standards, owners will have some incentive to arrange for municipal inspection as well. A municipal letter confirming that the apartment is legal will improve their ability to obtain mortgage financing and insurance and will increase the resale value of their property. Legalization also creates a way for law-abiding landlords to create second units. This avenue is not currently available in most neighbourhoods today.

The fourth way that Bill 120 will improve enforcement is in proposed changes to the ability of property standards and zoning bylaw officers to obtain search warrants by removing the requirement to specify evidence which will be seized in the course of making a prosecution. These are in addition to the broad powers of entry already provided to fire officials under the Fire Marshals Act.

Another issue we hear a great deal is, what about local services? Won't they be overwhelmed by apartments in houses? As Anne mentioned, considerable research has shown that apartments in houses tend to be smaller units and therefore tend to attract smaller households, which means that converted houses have on average only slightly more people than unconverted houses. This means that loading on sewer, water and road services should not be materially affected by the second unit.

The fact that second units are generally smaller also means that they tend to attract significantly fewer school-aged children than unconverted houses. This is a key point given that half of local tax bills typically go to providing school services.

The most important fact here is that apartments in houses are not for everyone. Even in what is arguably the strongest conversion market in Ontario, the city of Toronto, where apartments in houses have been legalized for a number of years, 80% of the homes which could

have a second unit remain unconverted. The possibility of apartments in houses overwhelming local services, taking all of these considerations into consideration, seems quite unlikely.

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The third issue which has been raised is, what about municipal revenues? Will apartments in houses pay their fair share? Discussions with assessment officials indicate that new apartments in houses typically generate a modest increase in property taxes when the assessor knows about them. Bill 120 provides a way for owners to create apartments in houses legally through a building permit. Building permits are the main way that local assessors find out about the need for a reassessment. Legal units created under Bill 120, therefore, have a higher likelihood of paying their share of taxes than the illegal ones in existence today.

The fourth issue we hear about frequently is, what about neighbourhood standards? After Bill 120 municipalities will still be able to control, among other things, on-site parking, maintenance, outdoor space and the physical appearance of houses, such as the building height, coverage on the lot, the setback of the houses from the street and so on.

Regulations under Bill 120 will set out some reasonable caps on the property and zoning standards that can be applied to apartments in houses, but this is just to ensure that standards are not put in place which effectively make it impossible to have a second unit.

Bill 120 does not override municipal zoning powers such as the regulation of building additions or front-yard parking. These matters remain within the control of the municipality.

In summary, Bill 120 provides a way for law-abiding owners to create apartments in houses which meet reasonable standards. It also provides a way for tenants to access their rights to safe and secure housing and offers municipalities some measures to improve their ability to ensure that standards are met.

I'll now turn it over to Michael Lyle who will provide you with an overview of the legal structure of the bill.

Mr Michael Lyle: I'm a solicitor with the legal services branch of the Ministry of Housing. I will comment on the structure of Bill 120.

The bill is organized into six parts. I will speak first about the three parts of the bill which relate to accommodation in which care is provided.

Part I of the bill contains sections 1 through 3 of the bill and these contain the amendments to the Landlord and Tenant Act.

Part II of the bill relates to the amendments to the Rent Control Act and these are found in sections 4 through 26 of the bill.

The amendments to the Rental Housing Protection Act are set out in part III of the bill. These are found in sections 27 through 35.

Parts IV and V of Bill 120 relate to apartments in houses and garden suites. Part IV contains the amendments to the Planning Act and these are set out in

sections 36 through 45 of the bill. Part V relates to the amendments to the Municipal Act and these are found in sections 46 and 47.

Part VI of the bill contains the commencement dates of the various parts of the bill and the short title of the bill. The amendments to the Landlord and Tenant Act and the Rental Housing Protection Act will come into force on royal assent. The amendments to the Rent Control Act come into force on the date of first reading of this bill and that is November 23, 1993. The amendments to the Planning Act and the Municipal Act are to come into force on a date to be named by proclamation.

Ms Beaumont: That concludes our presentation. Thank you for your time and attention.

The Chair: Thank you. I'm sure that members have some questions regarding the presentation. Mr Winninger.

Mr David Johnson: You're not going in any order?

The Chair: We have time to take them as they come.

Mr David Winninger (London South): There have been some news items recently expressing concern that the guidelines for fire protection and maintaining the fire code are only guidelines and not regulations. It would seem to me, given that the whole thrust of this legislation is to bring up to code and up to fire and safety regulations the quality of what have been hitherto illegal apartments in houses, given that thrust, perhaps the kind of concerns that have been expressed that we're more likely to have a fire in an illegal basement apartment, for example, than in a single-family home might be misplaced. I wonder if one or more of you want to comment on that.

Ms Beaumont: I'm going to ask Rob Dowler to speak to that, as Rob is the member of staff who has been dealing with the fire marshal's office on provisions in relationship to apartments in houses.

Mr Rob Dowler: Yes, draft standards are currently out in the public domain right now from the office of the fire marshal, but as Mr Winninger points out, they are just that. They are draft standards and they are just guidelines. There is currently nothing out in force right now which ensures that there is a uniform, standard approach to fire safety in apartments in houses.

As a result of the initiatives being conducted under Bill 120, we struck a task force which met in the first and second quarters of last year. That task force did deliberate and did develop draft regulations under the Ontario Fire Marshals Act which would set out formal standards for apartments in houses under that piece of legislation and under the regulation that the fire marshal has responsibility for. It is the intention of the government, as I understand it, and I think as our minister indicated this morning, to make that regulation law upon proclamation of Bill 120.

It would currently, we would argue, be difficult to make that provision law, because if orders were placed under the regulation, it would be difficult for people who own illegal units to come into their chief building official and apply for a building permit for the purposes of satisfying a fire marshal's order, because the unit is not permitted under zoning. At that point, the chief building

official would be placed in a situation of possibly having to issue a building permit for a unit which did not meet applicable law. He would be in a very difficult spot. With the proclamation of Bill 120, the unit would become a permitted use under zoning and the chief building official would be put in a position whereby the order could be cleared and a building permit could be issued.

The Chair: I have Mr Johnson. One question apiece and we'll just keep going around.

Mr David Johnson: Let's just carry on in that vein then, because I'm unclear, and I think you're referring to it, in terms of the standards that are going to be applied. Can you comment?

I'll try to maybe make a multiquestion since you'll only allow me one. Are they going to be the same standards as affect new construction? If they're different—in other words, there are building standards for new construction. For example, in living space I think there has to be a certain amount of light space that comes in. There may be access requirements, there may be ceiling heights among other standards that have to be met. If they are exactly the same, fine. If they're not, how are they going to differ and when will we know?

Mr Dowler: There is a tradition that has been established some time ago in dealing with existing buildings to have standards which are slightly different than the current standards that we apply today under part 9 of the Ontario Building Code for new buildings. I think that's based on the fact that when you're dealing with an existing structure, you're dealing with more difficult design conditions and perhaps more difficult economics than if you're dealing with a building which is being constructed from scratch.

There is a plan under the draft standard which was developed with the Ontario fire marshal to have standards that are somewhat more flexible than the standards which are currently applied to new construction. That approach has been used in our existing renovation code, which is contained in part 11 of the Ontario Building Code. That approach has also been used in other regulations issued under the Ontario Fire Marshals Act.

So the proposal, I think, is to have compliance alternatives and to have a slightly more flexible and, we would argue, more realistic approach than simply requiring adoption of new construction standards for existing buildings.

Mr David Johnson: I don't understand what "compliance alternatives" means. Does that mean every municipality can have a different set of rules and apply what it would like to apply? What does "compliance alternatives" mean?

Mr Dowler: There would be three sets of options contained in the draft regulation. These would deal with different combinations of situations. Different arrangements of rooms would call for different compliance alternatives. For example, if there are two full exits available and full fire separation in the unit, there may not be need for as stringent measures on the notification side—are there smoke detectors and things of that nature?—as there would be in a situation which does not

have as high a standard on the exiting side.

There would be three options which would deal with different packages of fire containment, fire notification and exiting, depending on the design conditions in the existing structure that confront the inspection and enforcement official.

Mr Hans Daigeler (Nepean): This is going to be a bit tricky if we just get one question at a time. My first question is quite straightforward. You're referring to a survey in your package here which says that there's 70% support across Ontario for the apartments-in-houses provision. I'm always interested in surveys, and this government continues to do surveys. I have some training in sociology, so I guess we do have to provide some work for the sociologists as well, but I do note with interest that the NDP government continues to do surveys. I remember the time when they used to actively criticize other governments for doing the same, but be that as it may, can I get a copy of the survey, in particular what kind of questions were asked, when they were asked and the usual stuff?

Ms Beaumont: Yes, certainly we can provide you with information and we'll comment on what exactly was done in that survey.

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Ms Borooah: The question was asked as part of a survey by the Environics Research Group looking generally at attitudes towards housing in Ontario and one of the questions within the survey related to acceptance of apartments in houses within neighbourhoods.

Mr Daigeler: Could I get a copy of that whole survey, not just of that question but of the survey?

Ms Borooah: Sure. We can make a copy of the survey available to you.

Mr Daigeler: To the committee.

Ms Borooah: Yes.

Mr Daigeler: Okay, that's straightforward. Is that too simple for one question?

The Chair: You've had your question. Mr Winninger.

Mr Winninger: Another concern we frequently hear out in the community is that with absentee landlords being encompassed in this legislation, it's going to lead to a lot of problems of enforcement, and I'm talking about health and safety, zoning and so on. I'm wondering why in your view it is necessary that absentee landlords be included in this legislation.

I ask that with a particular focus in mind, since a lot of the opposition in London seems to be coming from north London where there's a university, the University of Western Ontario, and it seems to me that it's a bit of a red herring to suggest that just because there is a problem with absentee landlords in the vicinity of the university that's somehow going to be aggravated, if you will, by Bill 120. Could you comment?

Ms Beaumont: Yes, I would agree with you about the London situation and make two kinds of comments. Firstly, that many of the issues that are raised in this context and the problems that are attributed to absentee landlords are problems that exist in single-family housing

areas of municipalities, they're problems that exist in many different kinds of residential situations and they're usually problems for which municipalities have potential solutions in the form of municipal bylaws, whether they be weed control bylaws, whether they be noise bylaws, whether they be parking regulations. But there are avenues for addressing some of the problems.

If you try to confine the application of this law to a situation where you only have an owner-occupant, the problem you face is that you're placing unnecessary regulation on people's ability to sell their house. For example, you may be in a situation where you have a house, you rent out an apartment within that house and you live in the remainder of the house. You move out of town—say you're with a company and they transfer you to another part of the country—and you want to rent out your house in your absence. If we confined the legislation to a situation where you can only apply it with an owner-occupant, the person who rents out your house would no longer be able to rent out the basement. We're limiting your ability to rent out your house. We're also placing the tenant in the basement apartment in jeopardy. So we have the practical problem there.

We also, I think, have a philosophical problem, and that is that as we've dealt with planning legislation in this province, as we've dealt with zoning regulations, as we're looking now, for example, in this bill to the provisions around the single housekeeping unit, one of the things we've tried to do is to address standards for use of buildings, standards for development of buildings, and not standards based on who lives there or what their tenure is. There is no provision in the Planning Act for dealing with a tenure situation.

In the particular situation in London, many of the situations that are commented on in north London in the vicinity of the university and in similar university towns, relate not to the situation we're dealing with in 120, where we're talking of one dwelling unit with the potential of one additional dwelling unit in it, but rather deal with the situation where you're talking of the splitting of a house into a number of apartments, which is quite different.

Mr Charles Harnick (Willowdale): I wonder if the minister can tell me whether Dr Lightman recommended that care homes be considered in the same piece of legislation as basement apartments.

Hon Ms Gigantes: He did not make that recommendation, but he did, in the context of the report that he provided for the public in Ontario, suggest that it was important, number one, that Ontario have the source of affordable housing that apartments in houses constitute and, second, that standards in apartments in houses needed to be attended to. He did address the question of apartments in houses in the context of providing affordable and safe housing for those people who find it difficult to find housing within the community, many of whom will at some point or another live in unregulated rest homes.

Mr Cordiano: I want to ask the minister a general question about affordable housing with regard to the last announcement with respect to allocations in non-profit

housing. As I recall from the facts that I received, there were 2,800 out of a possible 5,000 that were actually announced.

Does this mean, with the lower number of allocations that you've announced and with the provisions that are being made in Bill 120, that you foresee an increase in the number of basement apartment units being created across the province, thus alleviating the pressure that might be there for more non-profit housing that you often refer to as being the case in Ontario?

Hon Ms Gigantes: That's a very simple question to answer, Mr Chair. The proposal call that we made was for 5,000 units, and 5,000 units will be allocated by the end of this month. We've done it in stages.

Mr Cordiano: So we can anticipate further allocations.

Hon Ms Gigantes: Absolutely. We're going to be allocating 20,000 units under the Jobs Ontario Homes program.

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Mr Daigeler: On a point of order, Mr Chairman: Could I suggest that instead of just one question at a time, we go by 10-minute rotation, if that's agreeable to the committee? I find it very inconvenient to ask just one question.

The Chair: I'm certainly amenable to any suggestion the committee might make. If that's how the committee wishes to proceed, we certainly can do it in that fashion.

Mr Gary Wilson (Kingston and The Islands): This seems to be working very well.

Mr Winner: We're quite impressed; we're very impressed.

Mr Derek Fletcher (Guelph): It sounds good.

The Chair: Ten-minute rotation. We'll start with the official opposition.

Mr Cordiano: Just to carry on with that notion, to say there is a commitment is one thing—we'll find out if the further allocations will be there, and perhaps the staff would give me some idea of what you anticipate will be the number of units created as a result of the provisions in Bill 120. What do you anticipate? Do you have any projections as to how many new units will be created, those being accessory apartments, namely, basement apartments, across the province? Do you have any idea?

Ms Beaumont: It's difficult to anticipate, but if you look at the number that was quoted in Ann's presentation where she said that the city of Toronto—and we've had some comments that these provisions in the bill deal with the city of Toronto situation, that the demand for apartments in houses is in the city of Toronto and not in other communities.

You can then look at what has happened in the city of Toronto where accessory apartments have in fact been legal for a good number of years. In that city only in about 20% of the units that could have had apartments built into them has that actually happened. I would anticipate that you would be seeing considerably lesser volume in other communities.

Hon Ms Gigantes: That's doesn't mean 20% of all

homes because not all homes would qualify.

Mr Cordiano: So what are you suggesting to me, that there isn't really a great demand for this type of accommodation across the province?

Ms Beaumont: I think what we're saying is there is obviously a demand because 100,000 individuals have felt it necessary, for various reasons, to flout the zoning regulations in their community because they've seen it as important to them and to potential tenants to construct another apartment.

Mr Cordiano: But, see, the point is you have a law, a piece of legislation, which will deal with each and every municipality across Ontario in the same fashion and that's, I suggest to you, the fundamental reason why I have a great deal of difficulty with the approach you've taken, because if you're suggesting, on the one hand, that there isn't really the pressure there in most communities across Ontario—because, as you say, there isn't really the pressure in a community, the city of Toronto, ie—the experience has not been there to suggest the great pressures you're talking about.

Legalizing the existing units that are there is one thing, but to apply this legislation right across the province where there isn't any real demand for it in smaller communities or in communities that are not large urban centres is not justifiable to me. This is the source of difficulty in supporting this legislation. I think most people would agree with that.

Ms Beaumont: If you look, though, at the bulk of our legislation, if you look at planning legislation, if you look at legislation addressing housing, you'll find that most of that legislation applies across all communities and it does that for a variety of reasons. Fundamental among those, I think, is to provide choice—

Mr Cordiano: Now I've heard it all.

Ms Beaumont: —and to provide equity of choice across Ontario.

Mr Cordiano: This will not provide choice. I beg your pardon, but it will not provide choice. That's exactly the point.

Mr Rosario Marchese (Fort York): Mr Chairman, she was answering the question.

Mr Cordiano: But my colleague has another question to ask.

Hon Ms Gigantes: I think what you're confusing here is a difference between demand and supply, and you say in Toronto the pressure isn't there, which means that you read—

Mr Cordiano: No, no, I haven't said that.

The Chair: Let the minister answer.

Hon Ms Gigantes: If I could, what you see in Toronto is a situation where only one in five home owners, in those houses where the provisions would allow a home owner to develop an apartment, has in fact developed an apartment. However, there may be demand in terms of the market for more than that. So you have to keep those two elements separate in your mind. The pressure on the demand side is high. The pressure on the supply side depends on how home owners feel. Not every

home owner wishes to develop an apartment in a house, and there is nothing in this legislation to force a home owner to create an apartment in a house.

Mr Cordiano: I certainly would hope not. That would be the abomination of democracy.

Hon Ms Gigantes: I thought that your question showed some confusion around that issue.

Mr Cordiano: There's no confusion about that. Anyway, my colleague has a comment.

Mr Grandmaître: Looking at your survey, on page 11 you say that you've identified approximately 100,000 units in Ontario that are largely illegal. I'm talking about apartments in houses. Now, Madam Minister, you just said one in five. You did say in Toronto, though; I didn't hear you say across the province.

Hon Ms Gigantes: One in five of those units where the development would be allowed, and that is not all homes. Let's make that clear. That's not 100% of houses.

Mr Grandmaître: Very good. How many would you say, out of the 100,000 identified, are illegal apartments?

Ms Beaumont: I'm going to ask Ann Borooah to address that.

Mr Grandmaître: By the way, that's question A.

Ms Borooah: I'd like to ask James Douglas, who has done some fairly detailed analysis of the various surveys that have led us to our conclusions. He's on his way.

Mr Grandmaître: While we wait for his answer, maybe I could ask question B. What will you do, when the illegal apartments are identified, with these tenants if the landlord doesn't want to respect the fire code, all of the municipal services and so on and so forth? What are you going to do with these people?

Mr James Douglas: On question A, we have estimated there are approximately 114,000 illegal second units across the province.

Hon Ms Gigantes: Most of them are outside of Toronto.

Mr Douglas: Outside of Toronto.

The Chair: For the reporter, it would be far easier if we let the responder respond.

Mr Grandmaître: Thank you. I just want to make sure, Mr Chair.

Mr Mammoliti: I didn't catch that figure. What was that?

The Chair: Order.

Mr Mammoliti: I'm sorry.

Mr Douglas: Within Metropolitan Toronto, we estimate there are approximately 40,000 illegal second units out of a total supply of 62,000. In the province in general, we estimate there are approximately 114,000 illegal second units out of a total supply of 160,000.

Mr Grandmaître: Question C: How many of the 40,000 do you think can be converted and become legal basement apartments?

Mr Douglas: Clearly, there will be a whole range of units. However, many of those units are located in Scarborough and North York in fairly new houses where in all likelihood they could meet standards with respect

to ceiling height and exiting and smoke detectors either as they are now—ie, units are simply illegal for zoning purposes—or with a modest amount of renovation work.

Hon Ms Gigantes: Or in the attic. It doesn't have to be the basement.

Mr Grandmaître: It doesn't have to be the basement. Okay. I'm thinking of our own ridings of the Ottawa area. I'm thinking of Lower Town, Vanier and all of these places where there are no new subdivisions going up. They're mostly older homes. These people do rent illegal apartments, and I'm concerned about these people. I'm concerned for the safety of the tenants and I'm concerned for the land owner—not the land owner, but the owner of the apartments. To make them legal, I think is practically impossible. I've noticed in your survey that our own ridings are not even included in there. Is Ottawa-Carleton in your survey?

1620

Hon Ms Gigantes: Kanata did its own survey. Rob could speak to the question of older housing in existing units.

Mr Dowler: A point of clarification is that while the bill does make one second unit a permitted use it doesn't actually make that unit fully legal until performance standards have been met. So the bill would still require that fire safety, building safety and other standards will be met before the unit will become fully legal.

As to statistics for Ottawa, or Lower Town in particular, the municipality has not done a study that I'm aware of anyway. I'm a little out of date with Ottawa, but we don't have Ottawa's specific numbers. Kanata has done a little bit of opinion polling as to what people think about apartments in houses and that's included in your package, but we don't have numbers for Ottawa.

The Chair: Mr Johnson's eager and—or Mr Harnick.

Mr David Johnson: He's going to follow up on his question first.

Mr Harnick: Very briefly, Minister, you've told me that Mr Lightman in fact did make, in a roundabout sort of way, some recommendations about housing for vulnerable adults. It seems to me that in his report he listed 148 recommendations and nowhere did it say that a bill should be brought forward where housing for vulnerable adults should be included with a bill dealing with basement apartments.

He was concerned about protecting vulnerable adults and primarily in some sort of institutional or quasi-institutional form. One hundred and forty-eight recommendations later he never envisioned for one moment, and I put this to you, that vulnerable adults' housing needs should be associated in the same bill as a bill dealing with a municipal matter, specifically basement apartments. Why are you doing this?

Hon Ms Gigantes: Mr Chair, Dr Lightman will be appearing before this committee and I'm sure Mr Harnick will want to raise this issue with him, but my feeling is that Dr Lightman is concerned to see the measures which are before you in this legislation acted upon and that it is not a matter of such urgency to him to consider what envelope it fits in legislatively.

Mr Harnick: I can't understand—

Hon Ms Gigantes: He was not asked to take on a mandate in considering the question of apartments in houses; he did note as a result of his commission's work that this was an important area of housing for a lot of people with whom he was working.

Mr Harnick: There's just no question he wasn't asked about combining these two things because he would have been positively astounded to do that. What you've effectively done—and you know why you did it, you did it to tie the hands of the opposition who might be very, very supportive of the aspects of this bill that deal with vulnerable adults and who have grave reservations about dealing with basement apartments when virtually every mayor in the province of Ontario, every reeve, is totally against your basement apartment legislation, so much so that you yourself knew that—

Hon Ms Gigantes: Is this a question?

Mr Harnick: If you're just patient for a moment, I'll let you comment the same way you asked the Chairman to ask someone else to be quiet while you were trying to answer. I apologize. It reeks of hypocrisy when you pull Bill 90 and then you bring it back under the form of Bill 120. Why are you doing that? Why are you combining apples and oranges? Surely you have to have an answer that you can give us that's a cogent, real answer to tell us why you're taking a bill that deals with basement apartments and combining it with a bill that deals with protection for vulnerable adults.

Hon Ms Gigantes: Bill 90 was never pulled. The chief elements of Bill 90 are contained in Bill 120 and the member has noted that. It is my view that we are dealing here with legislation which affects the rights of residents in rental housing who have not previously had the protection that they need.

The source of the problems in the case of care home residents or in the case of residents of apartments in houses—they may have different sources of difficulties, but in effect in both cases, they have not been afforded the protection of the Landlord and Tenant Act and the Rent Control Act.

Those two pieces of legislation are critical to both elements of this legislation, and I would have thought that it would please legislators to deal with the issues of the application of the Rent Control Act and Landlord and Tenant Act for all residents who rent their accommodation in Ontario in one comprehensive piece of legislation.

Mr Harnick: Let me move on to something else.

Hon Ms Gigantes: Could I ask that Anne Beaumont be allowed to respond on that?

Ms Beaumont: If I could just take one moment and add to the minister's comment, I'd indicate that in his recommendation 127, Dr Lightman himself made that connection between accessory apartments in houses and rent home stock.

Mr Harnick: He was dealing with it in terms of vulnerable adults; he wasn't talking about municipal options, granny flats.

Ms Beaumont: He dealt with this in the context of a

chapter dealing with housing supply and choice.

Mr Harnick: For vulnerable adults.

Ms Beaumont: No, it was dealt with much more broadly than that.

Mr Harnick: I wonder if the minister can tell me why there is a municipal option for garden suites or granny flats and there is no municipal option for basement apartments.

Hon Ms Gigantes: The situation that exists in Ontario is that there has been a municipal option and that most of the apartments in houses which exist in Ontario are illegal because of zoning. It is that situation which we're attempting to remedy.

When it comes to the situation of garden suites, this is a use of property which we feel municipalities should have an option to pursue over a longer period of time than they have now and that will ease the situation for municipalities in terms of contracting with property owners. It's as simple as that.

We don't expect that there will be the same response on the side of garden suites. They are a temporary use by the very nature of the accessory unit concept, and in most cases property owners will not have an interest in developing them. However, when they do, for the purposes of the municipality, it will be more convenient to be able to set out the terms over a longer period of time.

One of my own colleagues has a constituent who is interested in developing garden suites as a manufactured product and he's concerned that small municipalities will lack the legal resources to draw up contracts that will be satisfactory, so I have suggested publicly that perhaps what we should be thinking about is drawing up a model contract that municipalities could use if they didn't want to devote legal resources to the kind of contractual arrangement they might use in these circumstances. That in fact might be a useful thing for us to be doing.

Mr David Johnson: Your response indicates to me that you feel that municipalities are either incompetent in terms of meeting your housing initiatives or they can't be trusted to meet your housing initiatives. It would be interesting when the municipal leaders come in over the next couple of weeks to see what they feel about that.

1630

But in view of the fact that it's already been stated that the city of Toronto apparently has a policy that allows basement apartments, the city of Toronto perhaps has the largest stock in all of Ontario of possible apartments in houses, and in view of the fact that certainly other municipalities are working towards housing initiatives, in view of the fact that the vacancy rate today as I understand it here in Metropolitan Toronto is about 2% or 2.5% and across the province of Ontario it's probably even higher than that, don't you think, rather than mandating to the municipalities what they should do, it would be a better way to go to talk to them, to indicate what your objectives are, what your policies are, to work with them? Isn't that a better approach for a government to take, rather than coming down with the hammer and telling them what they have to do?

Hon Ms Gigantes: The municipal housing policy

required municipalities to amend their official plans to meet provincial housing policy objectives beginning in 1989. The amended plans, for which the province provided financial assistance, do not include one of the goals, which was to establish that apartments in houses could be undertaken by property owners without regard to zoning. So we have had the test on that, and in fact in the continuing discussions that have gone on during that whole period there has still been municipal resistance, which I can appreciate. I can certainly understand their hesitation, if I put it kindly.

I'd like to make it quite clear that to attribute to me a judgement that municipalities are incompetent is inaccurate in the extreme. I think there has been a reluctance. I wouldn't call it incompetence at all. I'd like to make that quite clear.

Municipalities will express their concerns very directly, I'm sure, before this committee, and I've had the opportunity to meet with many councils, many town planners and so on on this issue. I feel it's an understanding of the combination of elements within this legislation that will help municipalities come to support it.

That may take a little time, but in fact we are addressing many of the concerns they have raised, including questions around parking, whether there will be a heavy loading on services and so on. I think many of the items which have been raised, once they understand the full concept involved in the legislation which is before us now, they will find quite workable.

Mr Mammoliti: First of all, let me state that I know Dr Lightman personally, and if he had a problem with the way the minister was dealing with this, her type of approach to both bills, then I think he would certainly point that out to the minister.

My question is to the ministry staff. I appreciate the statistics on illegal apartments: 40,000 in Metro, from what I understood. I'm sorry, I didn't catch the rest in the rest of the province.

Ms Borooah: Approximately 114,000, we think.

Mr Mammoliti: That's 114,000 above and beyond?

Ms Borooah: That's 114,000 illegal in the province as a whole, including—

Mr Mammoliti: Total. Separated would be 40,000 in Metro and—

Ms Borooah: About 47,000 in Metro.

Mr Mammoliti: Okay. When you put these statistics together, did you look at when these apartments seem to have come up, that a lot of them had come up during the recession, for instance? Do you find that most of them came up during the last recession? How many apartments have come up due to economic difficulties by home owners, for instance? How many were forced into having to open up a basement apartment illegally or lose their home, given the option? Have you looked at that at all? Can you give us any statistics around these circumstances?

Ms Borooah: Because of the way this information is gathered, we don't have any substantial information that tells us about the recent recession and any changes in the

rate. Our estimates are actually based on an average of rates over time. There is nothing to suggest that there was sort of a panic occurrence of conversions that occurred in the last few years.

Most of the data are based on information that we've obtained from census data and other things of that nature and on municipal surveys of their own housing stock. If you'd like a little more specifics on the rates of conversion, I think James Douglas could give us a bit more information he wasn't able to provide in answer to the last question.

Mr Mammoliti: If you can add possibly seniors to this, I'm not sure whether you gather those statistics, but perhaps seniors who might not be able to afford their home due to property taxes and other expenses.

Ms Barooah: Before James gives you the actual numbers, if I could just say, most of the research that we've done in the ministry over the last 10 to 12 years has suggested that the most likely converters are not seniors, although some seniors do convert, and it's more common for some reason in American jurisdictions than it seems to be here.

But the most likely converters are those who want to go out and purchase a home and they consider the option at the time of purchase. When they go to buy a house they want to buy one that's converted or they think about renovating the house and in the course of renovating create that extra unit and it makes that first purchase more affordable to the home owner. But in terms of the rates of conversion and any other data we have on who converts, James might want to add a bit more to that.

Mr Douglas: First off, the figure I mentioned before of 38,000 illegal second units in Metro is from municipal studies done between 1987 and 1991. I would anticipate that the figure is considerably higher as of 1994. Metro did estimate a conversion rate of approximately 4,000 units a year through the 1980s. Given the fact that some units are deconverted, for example, gentrification in Cabbagetown, the number of units created in the average year is probably about 3,000 net, so you can probably add another 9,000 to that 38,000 figure.

Other conversion rates for the province are very unclear, given the illegal use or nature of the use. However, American statistics have been suggested that where second units are legal, you can get a conversion rate over a whole municipal area of approximately one unit per 1,000. That will give some idea what would happen outside of the hot markets if Bill 120 was approved. That would mean approximately 2,000 units a year.

Mr Mammoliti: Clearly, this bill will help the younger, just-married couple who might find it hard to get a mortgage otherwise.

Mr Douglas: That is clearly one the groups that would benefit from the legislation. Another group is older people who have fixed incomes and are faced with higher property taxes and higher operating costs.

Mr Mammoliti: Like seniors.

Mr Douglas: Seniors.

Hon Ms Gigantes: If I could, Mr Chair, just one other note. There was reference earlier by Mr Johnson to

the question of vacancy rates. I should point out that what we know about vacancy rates, and CMHC noted it as far back as two years ago now, is that the vacancies are occurring in the upper-rent units and that among affordable units there is still a much larger demand than there is supply.

He also talked about the problem that landlords might encounter, because they were unfamiliar with the Rent Control Act, in determining appropriate level of rent. I'd point out that under the Rent Control Act, a new unit does not become subject to rent control for a five-year period.

Mr Gary Wilson: I'd like to continue on the reaction of some of municipalities and others too, and that has to do with the availability of the services for the projected units that would be built after Bill 120 is passed. I was wondering what the ministry has done to look into the availability of services and just how that crops up as a concern.

Ms Beaumont: It crops up in two different sets of concerns: one, around the provision of hard services, that is, is this going to put pressure on the pipe services, on the roads etc; and secondly, the provision of soft services, is it going to lead to overcrowding in the schools and provision of other services. We've looked at both of these. Ann, would you like to comment?

Ms Barooah: I think my remarks address some of these issues, that generally we found that in a converted house you expect a very marginal increase in the number of people who are actually occupying that house on average. So while average household size hovers around three, it will be a few points of a per cent higher for a converted house, so the actual population impact of the house is only marginally higher.

You mentioned earlier the rates of conversion. A number of figures have been discussed this afternoon with respect to rates of conversion, that in any given area you don't expect all of the houses to convert certainly at the same time. So where you might have, say, 20% of the stock in a certain neighbourhood converting and the actual size of the household is only marginally higher than the other households in the area, again there is not a population impact, which is what tends to impact on the use of hard services.

The third element relates to the kinds—a lot of the impacts on services are associated with servicing the structure and not necessarily the number of people in the house, like lawn watering, for example, is the greatest impact on peak capacity and that really doesn't vary depending on the number of units in the structure; it's the same lawn.

1640

From the point of view of social services, the most obvious example is the schools and the potential impact of two units in a house on the schools in a neighbourhood. The data there should be promising, in fact, to municipalities. Our indications are that the number of children per household in a converted unit is around 0.3 on average, and the number of children in an unconverted household is on average 0.8. So even if you had 0.3 in

each of the two units, you'd still have less children in the house overall, because the size of the units tends to not be as suitable for families, who may seek an individual unit of their own more typically, because the size is more suitable. So generally, we don't think those sorts of impacts would be felt.

We should keep in mind one other factor, and that is that very often it's those areas where the household size has declined over time that are most likely to convert, the older neighbourhoods where you no longer have new families that have moved there recently and therefore tend to be in the childbearing period and tend to have larger households. You tend to have two income earners or a couple or a single person who wants to live in one part of the house and maybe a single person in the smaller unit in the house, if indeed it's smaller.

Overall, that tends to recapture some of the population that would have been lost if the older household that had lived there in the first instance just stayed there and became an older couple with no one else living there. So we think there's a good balance in the bill between the availability of services in areas and the demand on those services created by the households that would move into the converted units.

The Chair: Thank you. We will be commencing a five-minute rotation among the three parties. Before that, I have a question that I was just discussing privately with the minister.

Mr Sean G. Conway (Renfrew North): Oh, let's take a vote on this.

The Chair: Certainly, Mr Conway. The question is: If the clerk has a home in which he has at the moment an illegal tenant, but then when this law is passed he legalizes the situation, is that a new rental unit within the meaning of the Rent Control Act?

Mr Grandmaitre: A conflict of interest; you can't sit as clerk.

Ms Beaumont: If it's in an existing dwelling, that would not be a new rental unit and excluded from the Rent Control Act for five years. If the clerk was planning on constructing a new house with a rental unit in it, that rental unit would be a new unit and excluded from the Rent Control Act for five years.

Mr Daigeler: I think he's talking about himself, the Chairman here.

The Chair: There is a big demand in Kagawong.

Mr Daigeler: I'm sure the demand is great up there.

I'd like to ask the minister, or if she wants to pass it on to her officials that's fine too, can you give me some precedents for what is obviously a very severe interference in the municipal planning authorities? I think you're obviously stepping in here with a very, very heavy hand, and perhaps you might want to say, "Well, it has been done before."

Hon Ms Gigantes: Yes, I could. It would be the Liberal housing policy that was developed when your government was in office to which we can refer this legislation as a natural outcome for the period of time when the housing policy was before municipal govern-

ments for them to make appropriate amendments.

One of the clearly stated policy directions was that there should be no zoning inhibition to the development of apartments in houses, and although municipalities went through enormous studies and surveys and consultations with residents and so on, with financial assistance from the provincial level, they did not meet that goal.

I think that, given the fact that it was a goal established under your government which is supported by this government, you shouldn't be surprised to see that once it wasn't met through the kinds of steps you're suggesting or Mr Johnson is suggesting would be appropriate—that's been tried, and it didn't work. So the goal still exists there, and the natural next step, when you don't have agreement and you decide the goal is a valuable one, is you take the responsibility at the provincial level.

Mr Daigeler: I'm going back a little bit now, and obviously I wasn't that closely associated with the housing issues at the time. Are you referring to the housing allocation, like each municipality would have to meet a certain income-related goal? Is that what you're referring to?

Hon Ms Gigantes: That was part of the housing policy statement. Perhaps Anne would like to add a bit of background.

Mr Daigeler: First of all, if I recall correctly, this was done with considerable support from the municipalities.

Hon Ms Gigantes: Oh, yes.

Mr Daigeler: In the end, I think it was basically a consensual approach to this.

Hon Ms Gigantes: Right.

Mr Daigeler: But be that as it may, you're also referring to the fact that these targets haven't been met, and again I would like to see something in writing.

Hon Ms Gigantes: Oh, yes. Anne could comment too.

Mr Daigeler: How far the various municipalities have achieved their objectives—I'd be very interested in seeing that in front of me.

Ms Beaumont: As the minister indicated, there were a number of provisions in the housing policy statement. The one that most people are most familiar with is that requiring that 25% of all new housing be affordable. But there were other provisions in those policy statements as well, and one of those dealt with the issue of intensification with apartments in houses, with rooming, boarding and lodging houses.

We can provide you with information we provide to the committee, information that Municipal Affairs and ourselves have collected on municipal action on this aspect as well as the broader aspects under the housing policy statement.

Mr Daigeler: I'm very interested in that.

Ms Beaumont: We'll get that for you.

Mr Grandmaitre: Let's go back to the 25%—25% of a new subdivision. It wasn't 25% of new homes or building permits that were applied for in one year. It was for a subdivision: 25% of that housing had to be affordable.

1650

Ms Beaumont: What the housing policy statement says, Mr Grandmaitre, is that 25% of new housing. It doesn't specify within a subdivision. It talks about new housing in the community. In the 25%, it did not include conversions. It specifically did not include conversions.

Mr Grandmaitre: You're right.

Ms Beaumont: But it dealt across the community.

Mr David Johnson: I just find it interesting, and I'm sure Mr Grandmaitre was going to say this, that with the 25% provision—I agree that the provision related to new housing and there was a flexibility in that particular policy. One application may have a lower percentage; another application may indeed be totally affordable housing. Municipalities had some flexibility, some choice or ability to deal with different circumstances. That's what I find is a problem.

One of the problems with this, it doesn't provide that option, but I find it curious when obviously progress was being made in terms of affordable housing, the 25% option, when the vacancy rate is indeed going up—I can say that it's not just expensive units. In my own riding we don't have a whole lot of expensive units and there are buildings that are on the lower end of the scale that are advertising there are vacancies. I don't know where you're getting your numbers from, but just going out in the field and seeing it, there certainly are vacancies.

I find it interesting when the real estate board here in Ontario says that the affordability now is better than it has been in a considerable period of time—I don't know if it's decades. It's at least one decade that the affordability in Ontario is the greatest—and yet with all these circumstances taking place the municipalities are told they have been unsuccessful. They have not dealt with this issue of affordable housing so bad boys and girls, you must be dictated to as to what you have to do.

The municipalities are also of the opinion that, once Bill 120 goes through, their official plans and zoning bylaws, by and large, will not comply with the dictates of the province of Ontario and that they will be required to go through the process of changing their official plans, their zoning bylaws to comply.

I see you shaking your head, Madam Minister, so maybe you'll go on record as indicating what's going to happen in that regard, because if they are required to hold public hearings, it's going to be certainly expensive. Not only is it going to be expensive but it's going to be very frustrating because people will certainly show up who are opposed to it, but there's not a darned thing the municipalities will be able to do. I wonder if you could tell us exactly how that process is going to work.

Hon Ms Gigantes: All that we are saying in this legislation is that the municipalities' power to exclude apartments in houses will be removed and we will put some caps on the amount of service—I'm not a planner so I'm not using these terms correctly—but the number of requirements that municipalities can associate with an extra unit in a house.

As Ann Borooah explained earlier, we're not in fact changing official plans. We're not asking municipalities

to stop using setbacks. We're not asking municipalities to make any major changes. We are saying if they do want to make changes which are associated with the fact that we are providing that they shall not be able to prohibit by mass zoning—if I could just finish—the development of an apartment in a house by a property owner, they are limited in the number of changes they might choose to make, not that we are requiring them to make but that they might choose to make, for a property which is having an apartment in a house developed.

For example, if municipalities decided that now that they could not by zoning bylaw prohibit the development of an apartment in a house but said that they were going to require three, four or five parking spaces for an apartment in a house property, then we would cap that and we would say, "No, we will certainly permit you to associate the requirement for one further parking space, but that should be the limit."

The Chair: Thank you, Mr Johnson.

Mr David Johnson: Yes, you see, this is what happens.

The Chair: Seeing no further questions—

Mr David Johnson: I have a further question. I haven't finished.

So what will happen then is Bill 120 will specify that in an area in any municipality in Ontario that formerly was designated single family, municipalities cannot exclude a basement apartment, but their zoning bylaws will exclude.

Hon Ms Gigantes: Apartments in houses; they're not just basement apartments.

Mr David Johnson: All right. The zoning bylaws will exclude and my guess is that the official plans could well exclude that as well.

The question is, you'll have in a number of municipalities, maybe most municipalities, zoning bylaws and official plans that do exclude an apartment in a house, notwithstanding Bill 120, and are you going to allow those official plans and zoning bylaws to stand in opposition without being changed?

If that happens, then my guess is that during various proposals for development and appeals to the Ontario Municipal Board—it'll be interesting to see what the legal position of that is when there are appeals. Normally, what would have to happen is that the official plans and the zoning bylaws would have to be changed to be brought in compliance with this mandate.

Hon Ms Gigantes: Would Ann like to comment on this?

Ms Beaumont: Yes, Ann Borooah has looked into this issue with the Ministry of Municipal Affairs and with its lawyers.

Ms Borooah: There are actually a number of provisions in the bill that indicate to the extent that an existing municipal official plan or zoning bylaw or any of the other provisions—property standards bylaws—contravene the intent of this bill, that those provisions would no longer be of legal effect. So even without an amendment to the official plans and the zoning bylaws and so on, the

provisions of the bill would stand. In the normal course of events, we think it would be beneficial for the municipality to go through the process of making all of those documents consistent with the law, but the fact is effectively they wouldn't be in effect any more.

Mr David Johnson: But you've just stated that you're expecting the municipalities to change their official plans, to change their zoning bylaws.

Ms Borooah: At some point in time, but the law will make them do it.

Mr David Johnson: And you recognize that is an expensive process.

Mr Grandmaître: One very short question. Madam Minister, you were talking about parking, for instance, and you gave us an example of the lack of parking to permit a second unit or a basement apartment.

Does that mean that the committee of adjustment in a municipality will be rendered void, nil, for the simple reason that that's its role and, if it doesn't change its zoning bylaw, how can the committee of adjustment guide itself if it doesn't have the proper zoning bylaw?

Hon Ms Gigantes: I should say that the same framework will apply to apartments in the attic as to basement apartments.

Mr Grandmaître: Now answer my question. Without a change in its zoning bylaw, in its official plan, how can a committee of adjustment in a municipality grant this capping?

Ms Borooah: Effectively, the bill would legally change their zoning bylaw. The bill would replace whatever provisions contravened the legislation. For administrative purposes, it would certainly be far better if their official plan and their zoning bylaw had the provisions that are required by the bill right in the documents.

Mr Grandmaître: And if it's not?

Ms Borooah: And it would be easier for the committee to read the plans and so on that way.

Mr Grandmaître: And if it's not?

Ms Borooah: And if it's not, the bill is still effective and the committee of adjustment—

Mr Grandmaître: You will impose it?

Ms Borooah: We wouldn't have to oppose it.

Mr Grandmaître: Impose it.

Ms Borooah: In law, it would apply to the decisions of the committee of adjustment as well.

Mr Grandmaître: Thank you.

The Chair: Thank you. It being 5 of the clock, the committee will adjourn. I'd like to thank the staff of the ministry for appearing before us today. I'm sure over the next few weeks we will bond very closely. I would like to thank the minister for appearing today.

The committee will resume at 10 am tomorrow morning—I would ask that all members be prompt; we have presenters to hear—and will reconvene at 2 o'clock that afternoon. The committee is adjourned.

The committee adjourned at 1700.

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STANDING COMMITTEE ON GENERAL GOVERNMENT

***Chair / Président:** Brown, Michael A. (Algoma-Manitoulin L)

***Vice-Chair / Vice-Président:** Daigeler, Hans (Nepean L)

Arnott, Ted (Wellington PC)

Dadamo, George (Windsor-Sandwich ND)

***Fletcher, Derek** (Guelph ND)

***Grandmaître, Bernard** (Ottawa East/-Est L)

***Johnson, David** (Don Mills PC)

***Mammoliti, George** (Yorkview ND)

Morrow, Mark (Wentworth East/-Est ND)

Sorbara, Gregory S. (York Centre L)

Wessinger, Paul (Simcoe Centre ND)

White, Drummond (Durham Centre ND)

**In attendance / présents*

Substitutions present/ Membres remplaçants présents:

Conway, Sean G. (Renfrew North/-Nord L) for Mr Sorbara

Harnick, Charles (Willowdale PC) for Mr Arnott

Marchese, Rosario (Fort York ND) for Mr Morrow

Wilson, Gary, (Kingston and The Islands/Kingston et Les Iles ND) for Mr Wessinger

Winninger, David (London South/-Sud ND) for Mr White

Also taking part / Autres participants et participantes:

Cordiano, Joseph (Lawrence L)

Ministry of Housing:

Gigantes, Hon Evelyn, minister

Beaumont, Anne, assistant deputy minister, planning and policy

Mason, Janet, director, housing policy branch

Borooah, Ann, director, housing development and buildings branch

Lyle, Michael, solicitor

Dowler, Rob, manager, planning and buildings policy

Douglas, James, policy adviser, housing development and buildings branch

Clerk / Greffier: Carrozza, Franco

Staff / Personnel:

Franco, Tera-Lynn, assistant to committee clerk

Luski, Lorraine, research officer, Legislative Research Service

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of Ontario**

Third Session, 35th Parliament

**Assemblée législative
de l'Ontario**

Troisième session, 35^e législature

**Official Report
of Debates
(Hansard)**

Tuesday 18 January 1994

**Journal
des débats
(Hansard)**

Mardi 18 janvier 1994

**Standing committee on
general government**

Residents' Rights Act, 1993

**Comité permanent des
affaires gouvernementales**

**Loi de 1993 modifiant des lois
en ce qui concerne
les immeubles d'habitation**

Chair: Michael A. Brown
Clerk: Franco Carrozza

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STANDING COMMITTEE ON GENERAL GOVERNMENT

Tuesday 18 January 1994

The committee met at 1007 in the Humber Room, Macdonald Block, Toronto.

RESIDENTS' RIGHTS ACT, 1993

LOI DE 1993 MODIFIANT
DES LOIS EN CE QUI CONCERNE
LES IMMEUBLES D'HABITATION

Consideration of Bill 120, An Act to amend certain statutes concerning residential property / Projet de loi 120, Loi modifiant certaines lois en ce qui concerne les immeubles d'habitation.

ONTARIO RESIDENTIAL CARE ASSOCIATION

The Chair (Mr Michael A. Brown): The standing committee on general government will come to order. The business of the committee this morning is to deal with Bill 120, An Act to amend certain statutes concerning residential property. This morning we are beginning our public hearings, which will take place over the next four weeks. Yesterday we had a briefing from the minister and the ministry.

This morning I'm pleased to welcome the Ontario Residential Care Association as our first presenters. Welcome to the committee. You have been allocated 30 minutes for your presentation. During that 30 minutes you have an opportunity to make your case, and the members always appreciate some time to ask some questions and to clarify your positions. If you would like to introduce yourself for the Hansard recording system, you may begin.

Ms Patricia Sousa: Good morning. My name is Patricia Sousa. I am the president of the Ontario Residential Care Association. On my right is Mike Bausch, who is chair of our public affairs committee, and on my left is Brent Binions, an association member.

I just want to point out to you that we do have handouts for you. We expected them to be here before 10, but they're not here yet. As soon as they come, we'll get them out to you.

The association represents approximately half of the estimated 600 retirement homes in the province, and on their behalf I thank you for inviting us to appear here today because we have serious concerns about Bill 120 that must be addressed.

To understand our concerns it is important that you first understand retirement homes and the people who choose to live in them. Throughout the province there is a total of over 37,000 seniors, disabled and post-psychiatric residents. The average age of our residents is 83 years. Twenty per cent of the residents are general welfare recipients.

People tend to move into a residential care setting when they can no longer remain on their own with a reasonable degree of comfort or because they prefer the sense of belonging that comes from a congregate setting.

Services offered in individual facilities vary from home to home, but there are basic services common to most.

For example, socialization and interaction programs help to keep residents involved in the community. Staff carry out 24-hour-a-day security and personal care support, assisting residents as needed with bathing, eating, dressing and medication. Also provided are homemaking services such as meal preparation, housekeeping and laundry.

The first point to remember is this: A retirement home allows a person to live independently with ongoing consistent and dependable support. Residential care fills the gap between home care and extended care and its role will grow in importance as care funding budgets continue to shrink, as the number of hospital beds for the elderly and disabled decreases, as the elderly population increases and as consumers continue to demand more choice and better service.

On this next point I want to be very clear: Retirement homes are not boarding homes. Boarding homes share no characteristics with retirement homes. Unfortunately, recommendations forwarded to the government by the Lightman commission lumped these two different types of facilities into one category. Consequently, the recommendations were formed to address the problems of what the Lightman report called "the lowest common denominator."

Now, on to our concerns about Bill 120. This piece of legislation is a misguided approach to regulating our sector. It will create problems for our residents because essentially it does not recognize situations unique to retirement homes and our focus on care.

Bill 120 is housing legislation. Retirement homes provide care services. Regulations designed for housing problems do not fit the situation which we face, but the government is determined to apply it to us instead of developing proper legislation regardless of the ramifications.

Specifically, emergency transfers are not recognized. A home cannot move a resident out of the facility without consent, even if the person needs more care than the home can provide or if the resident is a threat to other residents.

Transfers within a facility are not allowed. A home is not allowed to move a resident to another part of the home which may be specifically designed to deal with special care needs.

The role of the family is diminished. Currently we typically work closely with family members to ensure that an individual resident is on the best care route, but it appears Bill 120 overrides the involvement of the family.

Short-term stays are not recognized. Bill 120 does not allow for temporary stays; for example, while a resident is recuperating after time in the hospital, while receiving outpatient treatment or while family are away or unable to provide regular care.

Internal monitoring is not allowed. Because of dementia, some residents may have a tendency to wander. In these instances the person must be watched to ensure the safety the resident and family expects the home to provide. But the legislation does not allow a monitoring safeguard.

Non-emergency access is not allowed. Retirement homes must be allowed 24-hour access to residents' rooms to carry out important support services, but the legislation allows access only under limited conditions or with 24-hour notice.

Taxes could increase costs to residents. The association estimates rent control could raise costs to residents at least 5% because certain services will lose their GST- and PST-exempt status. Residents may also lose medical tax benefits.

Homes will have no flexibility in setting rates. Residents' care needs can change quickly, but we are concerned the legislation will require 90 days' notice before a care program can be altered. As well, facilities often reduce rates for times when a resident is away from the home temporarily or for admissions or discharges at times other than the beginning or end of the month. Bill 120, however, requires services to be calculated on a monthly basis.

A broad area that requires province-wide attention is the legislation's impact on the general welfare assistance program. The committee will be learning more of this later on in the hearings scheduled, but I want to bring this issue to your attention. In short, the legislation endangers these programs which are managed by individual municipalities. GWA recipients living in retirement homes require daily living support detailed in service contracts held by the municipality and the retirement home. The legislation puts into question retirement homes' ability to deliver the contractual requirements and could leave the approximately 7,000 GWA residents of retirement homes to cope on their own.

In conclusion, please understand that Bill 120 will remove our flexibility to deal with residents' care needs. The legislation will create a series of complex rules and procedures that might seriously affect the health and safety of the resident.

We think separate legislation is called for, but because the government is determined to proceed with Bill 120, we are intent on assisting the Ministry of Housing in amending the bill to ensure the best possible legislation.

We will be writing amendments and submitting them to the committee for what we hope will be serious consideration.

At this point, any one of us is happy to answer any of your questions.

The Chair: Thank you very much for your presentation. We will do the questions in rotation by caucus, beginning with the official opposition, Mr Daigeler or Mr Grandmaître.

Mr David Johnson (Don Mills): How are you going to do this?

The Chair: The time will be divided equally among the three caucuses.

Mr David Johnson: How much time do we have?

The Chair: I haven't quite done the math, and I will do that, but around five minutes.

Mr Bernard Grandmaître (Ottawa East): What was your input in Lightman's report?

Ms Sousa: We had none.

Mr Grandmaître: You were never consulted?

Mr Mike Bausch: We participated in the consultation process and, I believe, met with Dr Lightman on two occasions.

Mr Grandmaître: Two occasions? You're saying no. I just want to make sure that everybody's on side. So you were consulted.

Mr Bausch: Yes.

Mr Grandmaître: You were consulted before the report was written?

Mr Bausch: Yes.

Mr Grandmaître: How about after?

Mr Bausch: No.

Mr Grandmaître: You were not?

Mr Bausch: Although Dr Lightman did make a presentation to one of our convocations to explain his reasoning.

Mr Grandmaître: Ms Sousa, you mentioned that this bill should be divided, and you're not the only one suggesting that this bill shouldn't be what we call an omnibus bill; it should be divided, we should have separate legislation. Did you bring this to the attention of Dr Lightman, or did you know that Dr Lightman would combine your kind of services with housing needs in the province of Ontario?

Mr Brent Binions: No. We presented our case to Mr Lightman when he consulted us. We had designed, within our association, what we referred to as a model bylaw. It was, in effect, a draft type of legislation that would cover a minimum of standards for facilities delivering the care. It covered a number of the things that are touched on in the legislation, but it was specific to our sector. It dealt with the huge difference there is between a boarding home, which is strictly accommodation, and a retirement home, which is an accommodation facility that offers extensive services; in fact, a health-care facility, albeit at the lower end of the spectrum.

We designed a whole series of what we looked at as potential legislation to deal with all the problems that we saw, and we presented those to Mr Lightman and showed him how to deal with the various issues. We had some discussions on the issue of rent control and we had discussions on the issue of the Landlord and Tenant Act and how we could provide protection without going under that legislation.

In effect, I think what Pat was referring to before is that although we had discussions with him, we don't think he reflected anything that we had to say to him in his report. I guess that's our concern. We've provided that information to the government and, in fact, to both the caucuses of the—was it Health critics we provided it to at the time, or was it Housing—we provided it to both

caucuses at some point in time, the same time we provided it to Mr Lightman, so it's going back a year and a half now. That information is still available and we're certainly prepared to provide it again to this committee if they felt it was worthwhile.

Mr Grandmaître: Were you under the impression, when you were interviewed by Dr Lightman, that his terms of reference—let's refer to his mandate as his terms of reference—were to resolve the unregulated homes problems? Were you under that impression?

Mr Binions: We were under the impression that part of his goal was to look at unregulated boarding homes, which is where the problem started from the inquest, and as well to look at how that was different from retirement homes.

1020

Mr Hans Daigeler (Nepean): Just quickly, you referred to amendments that you plan to put forward and I just encourage you to bring them to our attention as soon as possible. I think we're very, very interested in this and I think that's a wise thing to do. Even though you'd rather see the bill either removed or reintroduced in a different shape, I think you are nevertheless well advised to put forward amendments. Perhaps the government is willing to listen to some of them, and I think the more that we can see them early on the opposition side, we may be able to assist you there. I just encourage you to do that as quickly as possible.

Mr Binions: The time frame was very tight to get our proposals or get our papers ready—

Mr Daigeler: Obviously.

Mr Binions: —being the first on the list. We are working on them and we'll have them, I would hope, within 10 days.

Mr Daigeler: I just encourage you to do that before we get into clause-by-clause. I think this will be very helpful for us.

Would you just tell me how many homes of your nature are out there at the present time in Ontario?

Ms Sousa: We estimate about 600 in Ontario.

Mr Daigeler: About 600?

Ms Sousa: Yes. Retirement.

Mr Binions: That 600 would include boarding homes as well as retirement homes, and we consider boarding homes a significantly different animal from ourselves. I would break it down. We think there are probably closer to 400 or 450 retirement homes—

Ms Sousa: Care.

Mr Binions: —as we refer to them, that provide the full care packaging, which is what we represent.

Mr David Turnbull (York Mills): Very quickly, I have three questions. Because of the time, I might ask you to keep the answers short.

The Chair: Approximately seven minutes.

Mr Turnbull: Mr Bausch, I know that you operate several retirement homes very successfully. Can you tell me, have there been any discussions with the ministry as to how they would allocate between rent and care? This

surely is very much of concern to you.

Mr Bausch: It's our understanding that initial allocation will be left somewhat to the discretion of the operator in that only the rental portion will be registered at the local rent control office. That initial rental is of course subject to dispute should an individual tenant or indeed the ministry itself wish to object. That's the limit of our conversation with them.

Mr Turnbull: They have suggested that if you set the rent at a level that they're not satisfied with, they can object to that. Is that's what you're saying?

Mr Bausch: They didn't suggest that they were going to, but of course the ministry reserves the right to intervene.

Mr Turnbull: Which is quite curious, because if anybody were crazy enough to build a new rental apartment building today, they would at least have the option of setting the initial rents themselves.

Just to expand on your point about the GST-exempt status, is my understanding correct that the services portion of this would then be subject to GST?

Mr Bausch: We're concerned about that; in fact, are really not excited about trying to get some sort of opinion. But at the moment, because of the bundled nature of what we do and a single monthly fee, it's been deemed to be an exempt service. If we unbundle, we're concerned that only the rental portion will continue to enjoy GST-exempt status and the other service elements, like food service, for example, could attract indeed not just GST, but possibly provincial sales tax.

Mr Turnbull: So there could potentially be a significant increase to the residents as a result of this legislation.

Mr Bausch: If all came to pass, we anticipate it could be as high as 5%.

Mr Turnbull: I'm sorry just to jump on so quickly, but in terms of the question of removal of a dangerous person, somebody who had maybe entered one of your homes as somebody who was completely compos mentis and deteriorated quickly, do I understand correctly that there would be the potential that there might be difficulty in removing that person from the home and the attendant dangers to the other residents?

Mr Bausch: Tremendous difficulty, and I might add this is one of the few areas in which we agreed with Dr Lightman. Even Dr Lightman recommended some form of "fast-track" eviction when a resident becomes a danger to himself or to others.

If I can just make one key point, the principal difference between what we do and the services that are provided in apartment buildings or rooming houses is the communal nature of our facilities. All the residents eat together, all the residents engage in social activities together and it's not like an apartment building where you can come and go. As a result, the actions of any one individual necessarily have an impact on others in terms of, if not danger, quality of life at the very least. It's been very much our experience that the norms that are established for acceptable care levels and acceptable behaviour are the norms that tend to arise in a group home, for

example. In other words, they're the construction of the residents themselves. The residents themselves will dictate the levels of care that are acceptable and the behaviour that's acceptable. I don't know if group homes are proposed to be regulated under this mechanism, but quite clearly we have more in common with them.

Mr David Johnson: I would like to congratulate you for an excellent brief. I might say that many of the concerns that you've raised today were raised by our brief yesterday, which was actually put forward, or crafted, I guess, by Margaret Marland. Some of the problems you mentioned under the Landlord and Tenant Act: that you can't evict without 24 hours' notice; you can't transfer patients, for example, from one floor to the other without going through severe difficulties; eviction is a problem that we've been talking about.

One of the questions that has come up pertains to the fact that the rent control applies to the rent, not to the care. But it seems as if, from the discussion yesterday, it's possible that the government could be considering care coming under control at some point. Certainly, this would be a problem in itself, but the fact that the Ministry of Housing would be responsible for deciding what's a reasonable increase leaves me in total dismay. I wonder what your comments are on that.

Mr Binions: We are extremely concerned about that element of the legislation. It can be done by regulation, as you are aware. They can move the whole control of care up by regulation, which they can do very quickly. It takes perhaps one individual out there who raises the rate by what the government considers an inordinate amount. In order to control that individual, the only way to do it is to put rent control on the entire sector. They don't have the ability to deal with one individually. If it did that, Housing is poorly equipped to deal with the service element when we are becoming more and more part of the health care spectrum. You would think that the Ministry of Health would be better equipped to look at something like that if it wanted to control it or to look at that if that's what it wants to do. We have great concerns.

The Chair: Do you have a question?

Mr Leo Jordan (Lanark-Renfrew): I just wanted to refer to your comments, Mr Bausch. You mentioned the bundled nature of what you do. I was wondering, are you saying that it's better left bundled, if you want to use that term, or do you partly support the separation of the different services you provide?

Mr Bausch: I suppose as providers we don't have passionate feelings about whether rates should be bundled or not bundled, but quite clearly there's a tax advantage to the resident in having them bundled. It attracts no PST, no GST, and indeed virtually their entire monthly fee is a medical deductible expense in terms of their income tax return. We're just concerned that when you unbundle, you're going to attract different interests and different taxation sources, and the ultimate loser is the resident.

Mr Jordan: Thank you very much.

Mr Gary Wilson (Kingston and The Islands): Thanks very much for your presentation. I certainly appreciated the account from your point of view because

of course it is based on your experience. One of the questions that I'm wondering about, since you raised the issue of fast-track eviction, is what you do now. What is the experience in your homes now when emergencies arise?

Ms Sousa: What we do now is that when the resident comes in, the family and the resident have a full understanding that should their health deteriorate or any medical reason, we would transfer them to a hospital or they would have to look maybe at a nursing home. Now, at this point in time we work very closely with the families and the doctor to take the resident from our facility to another facility or to the hospital or whatever. But under Bill 120, we would have to give them 90 days' notice.

Mr Binions: You couldn't give them notice. You couldn't evict them. They could stay there as long as they want under Bill 120. There's no mechanism for us to move persons out when they become a risk to themselves or to others in the facility or if we no longer have the services within our own home to look after them. There's no mechanism to move them on to another level.

Ms Sousa: Even to move them to another level of care within the building.

Mr Gary Wilson: But isn't it true that there are other agencies you can call on in the community to deal with an emergency when you feel that one of the people in your care is a threat either to himself or to other residents? I'm thinking of anybody from the police, say, to workers who are dealing with their care as far as their treatment goes, say, of psychiatric patients or former psychiatric patients, for instance.

Mr Bausch: I think the issue is not that there are other agencies that exist to be of help. The issue quite clearly is if the resident does not want to relocate, we're powerless to do anything about that relocation.

Mr Gary Wilson: But I'm suggesting you're not powerless in an emergency. As far as the longer-term considerations, which the Landlord and Tenant Act will bring into effect, that is something that can be worked out over a period of time, the determination that time exists, but not in an emergency, and I think that's quite clear.

Mr Bausch: We're advised by ministry staff that the only grounds for eviction are non-payment of rent.

Mr Binions: Non-payment of rent. There's a very limited strength, none of which applies to this.

1030

Mr Gary Wilson: But I think the issue is, in an emergency, where there is a danger either to the residents themselves or to another resident, there are actions that can be taken that deal with the emergency. Then on the question of eviction, again keeping in mind the rights of the resident, which is what we're dealing with here, the Landlord and Tenant Act will take over there to make sure that their rights are accounted for.

Mr Binions: No. We don't see it that way. At the present time, we work by way of contract. We have a contract with the resident that says, "When, in conjunction with your family and the doctor, it's felt that we can

no longer adequately care for you in this facility, we are entitled to give you notice and you will look for another place," in effect, a long-term care facility where higher levels of care are offered.

Under this legislation, that contract will be null and void. The resident will be able to stay there no matter how heavy his care is. They could be fully incontinent, something we don't deal with at our level of facility. They could become severe wanderers. We can handle maybe level 1 Alzheimer's, but we cannot handle level 2 or level 3 Alzheimer residents. That's not something our types of facilities are constructed to do. As that goes on in the deterioration of a resident's health, as that continues, there's no mechanism for us to give notice under the Landlord and Tenant Act to say: "We can no longer look after you. You're a risk. You're causing problems for other people who are in the facility because your actions are improper." They may not even know their actions are improper. There's still no mechanism to protect the rest of the residents.

Mr David Winninger (London South): I disagree I think with your premise that there are no remedies for the retirement home operators. First of all, if someone becomes incompetent to make a decision as to whether they should remain there or get hospital care, for example, you're familiar with the Substitute Decisions Act and the machinery presently in place.

Mr Binions: That's not been proclaimed in force yet.

Mr Winninger: No, but under present legislation, you can still seek to have a committee appointed. It may be a guardianship situation as well. If you're in an extreme situation under the Mental Health Act and someone's a danger to himself, herself or others or in imminent danger of bodily harm, you can seek an order for psychiatric assessment there. Lastly, it seems to me that under the existing provisions of the Landlord and Tenant Act, for a variety of circumstances including when someone is a danger to other tenants in the building or disturbing the quiet enjoyment of other tenants in the building, you can serve a notice and that tenant is obliged to comply within seven days, as I recall. So there's a variety of remedies open to you.

Mr Binions: Six months to a year to move someone out in that situation. That's just unacceptable in the type of services we offer. The rest of the people who have to stay and live with this will be gone in those six months to another facility up the road where there isn't that kind of person. In effect, you are destroying our ability to do business.

Mr Winninger: Under the Mental Health Act, you can do it overnight.

Mr Binions: Under the Mental Health Act, it's only if the person's incompetent. You're only dealing with a small part of the problem. More often than not, it's not because they're incompetent; it's because their level of care has gotten way beyond what we're capable of providing. When that happens, we give notice. That's the agreement when they come in. You're taking away our ability to run our business.

Mr Winninger: I was just quarrelling with your

assertion that you're stuck for ever with a tenant who may become incompetent. You're not. There's a variety of ways to have that tenant dealt with.

Mr Binions: Let me go another way around that. I don't have the ability to walk in and say, "I want to be appointed committee under the Mental Incompetency Act." The Substitute Decisions Act has not been proclaimed in force and may not be for another year. There's no clear date set for that.

Mr Winninger: Committeeship under the present law.

Mr Binions: So if we go for committeeship under the Mental Incompetency Act, it may be that the family member decides they want to be appointed committee, and the family member may say: "We don't care if you can't look after this person. We don't want to move him." I'm still stuck with him. So the Mental Incompetency Act does not supply a full answer to the problem. It's unlikely the family is going to let me have him declared incompetent and me appointed a committee. That's very unlikely.

The Chair: Thank you, Mr Winninger. We appreciated your comments.

Thank you very much for appearing before the committee this morning. We look forward to receiving the amendments that you are drafting. The committee will be happy to have a look at those. For your information, there will be clause-by-clause consideration of this bill in February.

GREATER TORONTO AREA MAYORS

The Chair: The next presentation will be from the greater Toronto area mayors, Mayor Hazel McCallion, chair.

Mrs Hazel McCallion: Thank you very much, Mr Chairman. I'd asked the mayor of Caledon to join me and the mayor, Nancy Diamond, is stuck in traffic. She's on her way too.

The Chair: Good morning. You will understand that the committee has reserved 30 minutes for your presentation, and we always appreciate some time to have a conversation with you during that 30 minutes.

Mrs McCallion: Yes, we appreciate it and look forward to the questions.

First of all, I wanted to make the position of the greater Toronto area mayors very clear. We have never on any occasion said that we are against intensification or accessory apartments. Never. I want to make that very clear. We have always indicated to the minister that we are concerned about the implications of what she intended to do, and that is by nullifying the zoning in all residential areas in a municipality.

As you know, after she made the announcement that the government was going to legalize basement apartments or accessory apartments as-of-right in all zones, I can only assure you that I can speak for the city of Mississauga, where we estimated we had 7,500 illegal and it doubled overnight as a result of her statement, because immediately they felt they had the support of the Minister of Housing and the province of Ontario to justify.

I have never seen an issue in the 24 years I've been in local politics that has had the unanimous concern of the municipalities of Ontario, not just the greater Toronto area. AMO will be here in February and they will put their position forward. I don't know of any municipality—the committee may know of one, but I don't know of any municipality in the province that has said, "Great," exactly what the minister wants to do.

What we have clearly indicated to her are the concerns: the safety concerns, the right to enter etc. I've done, for the benefit of the committee, the major issues that have been submitted by 21 municipalities out of 30 in the GTA, and I'd like to distribute that to the committee to show you the major issues that have been raised.

No municipality has objected. They've opposed, because they felt that there was no consideration given by the minister and her staff to the concerns raised.

What puzzles us as mayors of the greater Toronto area and of the province of Ontario councils is that I believe we're elected to know the services that must be provided to citizens. We're responsible for making sure there is water, making sure there's sewage capacity, making sure that the fire code and the building code are implemented, and that's what we do.

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Secondly, we've spent the taxpayers' money over the years based on mandates from the province of Ontario to have an official plan, to have secondary plans and to have zoning in our municipalities. We've spent millions and millions of dollars. We're in the process now of reviewing our official plans at the request—demand—of the government.

And then we have the Sewell commission in the process of looking at the Planning Act of the province, which is to determine how communities are built and serviced, concern for the environment, concern for people, concern that adequate facilities are there, and to make sure that they're used to the greatest advantage.

Then along comes the minister, in the midst of this very expensive study, and says, "Oh, zoning out the window in residential areas." In comes as-of-right.

I remember when Lorna Jackson, the mayor of Vaughan, led a delegation of the greater Toronto area mayors to meet with the minister at least a year ago. I remember the mayor of Whitby saying to her—a very strong supporter of the party that's in power, by the way, in the province of Ontario—"Madam Minister, if basement apartments go into a certain zone in Whitby, they will not be able to flush their toilets." That's a pretty common, practical thing. See, the mayor knows that there's no capacity there. Does the Minister of Housing know there's no capacity there? No. How would she? How would the government know the capacity of the services that are needed in a municipality? You have no idea of the services.

We go through this very lengthy process, consolidated reports, to make sure that there's sewage capacity in the area to serve a development: water, roads, traffic, community services, soft services such as library, baseball diamond, soccer fields etc. The province has said,

"You've got to do that type of planning," and we agree, and we have agreed over the years. Now the province comes along and says: "Sorry, out the window, folks. We're just going to, through our decision, add another 5,000 or 10,000 people to a secondary plan, and don't worry about the services." Those are the services.

Our fire chief is going to be here this afternoon. I'm not going to concentrate too much on the fire and building code, because I think his report says it all.

I was on a radio show, I believe with you, the other day, Mr Winninger, with the mayor of Sarnia and the mayor of London. I have never seen an issue that has disturbed the mayors so much as this issue, because you're taking away from the municipality the right to plan for people. You're just saying, "Sorry, we know better at Queen's Park." Well, I'll tell you, I have grave concern about that, because if I don't know my municipality and my council doesn't know and my staff doesn't know, how in the world do you know at Queen's Park?

Our fire department went to a fire two weeks ago, before Christmas. He will deal with the fire in Mississauga. I'm so pleased that Dr Clarkson has called an inquest. I can guarantee you, members of the committee, they're not only going to be looking at the cause of the fire, they're going to be looking at the conditions under which this mother and her child lived in regard to the entrances, exit etc.

I can assure you that the firefighters of this province are concerned about their safety in going in, because we don't have the right to enter. Yes, we do have the right to enter when there's a fire; we send our firefighters in to risk their lives.

We have clearly indicated, and as chairman of the greater Toronto area mayors, we said to the minister, "We'd like to work with you." Bill 90 came on the scene, and then we were told Bill 90 was put on the back burner. Now, out of a clear blue sky, came 120, with no consultation at all. Is that a way to do business in today's age? We don't think so.

We say to you, as members of the committee, the minister is not listening. I have to tell you. The fire marshal's office prepared regulations that I believe were submitted to the minister back in August to try to get a handle on the fire meeting.

We've had illegal apartments, I would think—I can only speak for Mississauga, but I'm sure in most municipalities—through the ages. But we had the zoning that when we found a situation reported to us and we could develop information, without the right to enter, to take action. We did. In fact sometimes we've been very successful in convincing the people of their legal liability with an illegal apartment. I also hope the insurance companies will start to take recognition of whether or not insurance coverage is applicable to an illegal apartment. Through convincing, and through court cases we've been successful with, we have been able to eliminate illegal basement apartments.

We have asked, the municipalities have asked, ever since this was brought forward and back when the Liberal government was in power and came forth with its report

on intensification, we questioned then with that government the right to enter.

I have to tell you, members of the committee, that we have grave concerns. They have not been addressed by Bill 120, even though I have a file this thick of presentations made only by the municipalities of the greater Toronto area that have been submitted to the minister. She is not listening, and even though she's taken the mayor of Mississauga on—and I really enjoy it, because I don't think I back off from somebody taking me on. But when she accuses me of supporting snob zoning, she's accusing the mayors of all the province of Ontario of snob zoning, and the councils, not present but the ones of the past.

I think she got the idea in the United States. Too bad she visited there to get the idea. But I have to tell you that we take it—somebody phoned me and said, "You should ask for an apology." I said, "It isn't worth anything, an apology from the Minister of Housing to the mayor."

I will deal with it, because my citizens and the citizens of the municipalities are behind their mayor and council, because they know we do not oppose intensification, we do not oppose accessory apartments. We want to determine, as duly elected people by the people of the municipality, as to where they go, to make sure they're safe, to make sure we can serve the people who come out of the accessory apartments and the areas that are intensified.

We have done a major study in Mississauga to find out what areas can be intensified. I think we're cooperating. But we take real exception to the dictatorial approach of the Minister of Housing and of this government in saying: "We know better. You at the local level do not know where these things should happen." I think that's an insult to the municipalities of Ontario and an insult to the greater Toronto area.

The list there clearly indicates the concerns of the municipalities, and I can assure you that all we want is our concerns recognized and implemented into the legislation. Most important of all, you know, to go and get a warrant to enter a place, we'd keep the magistrates busy. We should have the right to enter, and the bill should clearly indicate the right to enter and not that we get a warrant to enter.

I can assure you that our fire chief will deal this afternoon with the fire regulations and the building code. They too, the fire chiefs, are not against intensification. They have never said they're against it. They have never said they've been against access.

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I take exception to the minister—and of course a Toronto rag called the Star came out and supported her. I hope the Star is here. I challenged John Honderich two years ago on an editorial that said that the mayors were against intensification, and I asked Mr Honderich to do his homework and to get those who write those editorials—I don't know where they get them to write those editorials—to do research and a survey before they write editorials. Well, they came out again and supported the minister with accusing the municipalities of snob zoning.

Both of them are in the gutter, in my opinion, both the Star and the minister, and I take real exception to it. But an apology from either wouldn't be worth the paper it's written on. So, Mr Chairman, that's my presentation to you. I look forward to your questions.

The Chair: Thank you. We'll begin the rotation with the Conservative caucus.

Mr David Johnson: A hard act to follow, but my usual congratulations to Mayor McCallion. It's interesting, Mayor, that we're talking about this at a time when the vacancy rate is up in the province of Ontario, when the affordability of housing is as good now as it's been for probably a couple of decades, when we've had success in all the municipalities, Caledon, York, Mississauga I'm sure and others, in terms of instituting 25% affordable housing, with new proposals coming in. Yet the minister doesn't think that the municipalities are doing their job. The minister says the municipalities are not cooperating and they're not reaching the affordable targets, and that's why she feels compelled to bring this in. I wonder what your reaction is to that.

Mrs McCallion: I'd like both the mayor of Caledon and the mayor of York to join me in responding to these questions, because this is not Mississauga speaking today; it's the mayors of the greater Toronto area. We agree that in fact municipalities—and I can only speak for my municipality in this regard. We have never resisted social housing coming in. In fact, we would take more units if we were allocated them to build what we call "adequate accommodation," because I believe these people need dignity and pride in where they locate. So we find in our municipality that the vacancies have increased considerably.

Needless to say, not just this government but the former Liberal government and the former Conservative government—and I'm non-partisan, as you know—killed private sector building of rental accommodation. You're all guilty of it, so you can't escape from that. Rent control has been a detriment to building, and that's not improving, by any means. Only condominiums are being built if there are apartments going up, and now social housing. But I'd like Mayor Fergy Brown or Mayor Calder to respond. Fergy?

Mr Fergy Brown: I certainly agree with everything you say. We don't oppose the legislation providing these accessory units. We try to encourage them in the city of York, we believe. Our housing study that we did a couple of years ago, we held it up because the province had a document that was coming out. We held it up for a couple of years, and when it came out we were in agreement with what you were doing.

But really and truly it's the regulations and so on that we need to provide this particular type of housing. The biggest thing, in our mind, is—it confirmed our worst fears when that disaster happened in Hazel City that people were victims in a basement apartment, because we have no rights of entry. I don't know whether we have bylaw enforcements where the officers just aren't tough enough, but they go up there and they just can't get in. We know that this particular legislation would legalize—we'd have tons of apartments in the city of York. It sure

isn't any snob zoning there, because we've got nothing to be snobbish about, not any more than East York.

Mr David Johnson: Just good people. Just following up on your comment there, Fergy, isn't this a head-in-the-sand approach? Because until municipalities have the right to get in to find out what's going on, to look at these problems, this issue is not going to go away. There are still going to be problems. In my humble estimation, the legislation that's before you right now, Bill 120, is not going to solve that problem. It's not going to give the municipalities the tools to deal with the enforcement.

The answer here is that the province should set some overall targets or guidelines in terms of policies. Municipalities should be given the tools, such as the enforcement tools and the flexibility through their zoning, to deal with the province's targets and then address the issue within each of your municipalities according to local needs. Is that the answer that you're saying?

Mrs McCallion: Let's take school accommodation in the region of Peel. There isn't a new separate school or public school that opens that hasn't got 15 to 20 portables on the site the day it opens. So school accommodation is under extreme pressure in Peel because of our growth. We're trying to provide the affordable homes, all range of homes, as well as the social housing that is required to accommodate these people. As I say, this is bringing pressure to bear on our services that are not of a safety—and I want the fire chief to deal with that, fire safety and building code.

Mr David Johnson: But just that you mention it—

The Chair: Your time has expired, Mr Johnson, I'm sorry. Mr Wilson.

Mr Gary Wilson: Nice to see you again, Mayor McCallion. It's always an informative and I would say a lively presentation. It certainly leads to good thought.

One of the things that you raised is the issue of consultation and just the whole idea—first of all, I want to say that I think there is a lot of agreement here. You seem to be suggesting municipalities are after providing good housing in their communities and that's what our goal is as well. I think the thing that we have the capability of giving is a provincial view of this. Just to determine what the provincial view is, we did hold a vast consultation in 1992 that saw many submissions, both from municipalities but from others, and sure there's disagreement on the way to move on this issue. As you suggest, many municipalities are against it. There are a few that are in support of it, but sure, the majority are against it.

But there are many other groups in the province, and I'm thinking of housing advocates, legal and social agencies, that are in support of the issue of legalizing these apartments and I think that is one of the central issues, that these apartments exist already and what we're trying to do is bring them out into the open where we can make sure that they do meet the health and safety standards that we all are in support of.

Another issue is just the complexion of the municipalities as they exist now. You mentioned schools, for instance, where portables have to be brought in to some

schools but there are other schools in older neighbourhoods where portables aren't needed. In fact, the classrooms are empty—or not empty, but certainly underused. It's a question of trying to bring standards throughout the community that will use all our services and this is one aspect of doing it. But again, the important thing is to bring them into the open so that the tenants and the owners have their rights as far as providing this kind of accommodation goes.

Mrs McCallion: You just hit the nail on the head. You said that there are municipalities that might have vacant schools. Do you know it at Queen's Park? Don't you think the mayor and the council know where the empty schools are? How do you know at Queen's Park where they are? If you nullify zoning, which you're going to do, then it's as-of-right in any zone and that could be in a zone where there are vacancies, but it could also be in a zone where there are no vacancies. So my whole position is and the position of the mayors is, let us decide where they go, because we're aware of all the facilities.

We go through a very lengthy process of asking the school boards, "Can you accommodate this development?" and they come back and say, "Yes, we can," or, "No, we're going to have to bus the kids and put a condition on the sale of the house that their kids could be bused." We go through that process now and what this legislation does has knocked that out the window. In other words, it doesn't matter: as of right, legalize them wherever they are.

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Mr Gary Wilson: Yes, but that's not going to happen though.

Mrs McCallion: Oh?

Mr Gary Wilson: First of all, again you go back to the fact that those apartments are there already and again we have to bring them into the open to make sure that the standards apply. We also are giving the municipalities greater access to—

Mrs McCallion: But sir, we have to deal with the ones we've got now, but how about all the others that are going to come in when you nullify the zoning? Come on.

Mr Gary Wilson: Yes, but how many are going to actually be created?

Mrs McCallion: Ho.

Mr Gary Wilson: You suggest that everyone suddenly will be putting another unit in their residence, and that's just not going to happen.

Mrs McCallion: Oh, well, how do you know it's not going to happen? You're asking me how I know it's going to happen.

Mr Gary Wilson: First of all, the province isn't going to double in population simply because Bill 120 passes. But there are certain circumstances where people would find it advantageous. For instance, in cases where a family moves out and the parents are left behind, it helps them in supporting themselves in their homes if they could put a unit in there.

Mrs McCallion: Are you going to collect the income

tax from it? There's another thing. I haven't even touched on the financial—

Mr Gary Wilson: Yes, but that is another factor.

Mrs McCallion: No, but just a sec. I haven't even touched on the financial aspect of it. How do you get an accessory apartment on the assessment roll? Can you explain it to me?

Mr Gary Wilson: I can have that explained to you.

Mrs McCallion: No, no. I want to know if you know, because if you're sitting on this committee you'd better know how.

Mr Gary Wilson: We'll find out together. Do you want the answer?

Mrs McCallion: Oh, Jeez, got to ask that.

The Chair: Mr Wilson, your time has expired. Mr Cordiano is going to continue the questioning.

Mrs McCallion: How about lot levies?

The Chair: Mr Cordiano.

Mr Grandmaitre: Right on.

Mr Joseph Cordiano (Lawrence): What I do know is that the minister has blamed you for a couple of things. First of all, she says municipalities like yours and the restrictive zoning bylaws keep undesirables out. Snob zoning it was labelled yesterday and before, and as well she blames you for the tragedies which have occurred, I mean the restrictive zoning and the illegal basement apartments that are out there now. I've heard your reactions to that. Of course I don't agree with the minister and that I make very clear to you, but do you think there's any hope that what the minister is proposing will prevent those kinds of tragedies?

Mrs McCallion: No, because we have to have the authority to find out where they are and we don't have it under the bill. It's simple as that. It's so simple.

Secondly, I'll be around a hell of a lot longer than she will, I can tell you.

Mr Cordiano: I'm pretty sure of that. If we can help it on this side, you will.

Mrs McCallion: I don't need your help, thank you very much. You just have to do the right thing for your people.

Mr Cordiano: Maybe we need your help. How is that?

Mrs McCallion: You may need our help.

Mr Cordiano: Okay.

Mrs McCallion: You don't need the help of the mayors. By the way, Nancy Diamond, the mayor of Oshawa, has joined me.

Mrs Nancy Diamond: Good morning. My apologies. We could talk about roads another time.

Mr Cordiano: Welcome. The other thing the minister said yesterday, of course, and just getting back to the point that was made earlier, the disappearance of the kinds of neighbourhoods that now exist in municipalities like yours, North York and others where you have single-family dwelling units—yes, exclusively single-family dwelling units—I think the minister can't fathom that.

I think it just doesn't sit well with this government that this is a possibility that will exist well into the future. I think there's a bent there that they want to destroy that type of neighbourhood, and with this kind of zoning that's going to be required there will no longer be the existence of single-family dwelling units, neighbourhoods made up exclusively of that.

Mrs McCallion: I'd like to ask the mayor of Oshawa to respond to that because I think her municipality is—

Mr Diamond: Thank you, Mayor Hazel. I would say that the issue is not only around single-family and so-called snob zoning. We're going to destroy the town homes, we're going to destroy the semis with this kind of intensification.

Just to give an example of the issues that would be relevant in Oshawa, supposedly this bill is to allow people to gain access to housing. We have a 4% or 5% vacancy rate, and by provincial standards of affordable housing, of all the sales made in Oshawa last year, 90% were affordable. We don't have a problem, so please don't try to fix it.

Mr Cordiano: No, and the auditor pointed that out in the non-profit housing report that came out last year.

One final point—

Mrs McCallion: Let me comment. In our municipality, we have the widest variety of housing you can find. We have an enormous amount of social housing and we support that. We take a lot of flak for it, by the way. We'll have a council chambers with 500 to 600 people. We say, "Sorry. If they're in the right place, we support it," and we stand up to the citizens, and I still get re-elected.

Mr Cordiano: That point about it being in the right place or allowing municipalities to determine—

Mrs McCallion: Exactly.

Mr Cordiano: Do you think there's a middle ground on this? Do you think we can work out a solution that is a compromise along the way?

Mrs McCallion: Yes. I think there can be and I think the mayors are prepared to do it—and the mayors of Ontario, by the way, not just the mayors of the greater Toronto area. I've been asked to bring together the mayors of the large urban centres on this issue to also make a presentation and I think we'll join AMO in the presentation to this committee. It is a unanimous approach across this province. I've never seen an issue that has joined the mayors and the municipalities, not opposing—and I want to emphasize that because the Toronto Star is around here—accessory apartments, not opposing intensification.

All we ask is that we be allowed to decide where it goes so that we know that we can look after the people who come out of the houses, out of the accessory or intensification. Make sure they're safe, make sure they're according to the fire code, make sure they're according to the building code. Is that a common, sensible request?

Mr Cordiano: We're going to make some amendments that attempt to do that, so hopefully they will pass.

The Chair: Thank you, Mayor McCallion, and your

colleagues for appearing before us today. This bill will be considered in clause-by-clause until the week of March 6. Thank you for appearing.

Mrs McCallion: But you know, from my experience of appearing before other committees, I sure hope that something comes out of this. I really do. I think that otherwise you're window dressing with these committees, I've got to tell you. I hope this is not window dressing on behalf of the safety of people.

ERNIE LIGHTMAN

The Chair: The next presentation will be made by Dr Ernie Lightman. Could we clear the room, please, of those who are wishing to leave. Could we take all conversations out of the room, please. Order. Good morning, Dr Lightman.

Dr Ernie Lightman: Good morning.

The Chair: We have heard your name several times already and we are just beginning these hearings. It's a pleasure to have you here with us. You've been allocated one half-hour by the committee for your presentation. You may begin at your leisure.

Dr Lightman: I was going to say that was a very hard act to follow, but somebody already said it so I won't start with that.

This morning I'm not going to say too much, really, that's new. Most of what I had to say was in the report which was tabled last June. I must confess that when I sat down the first day at the computer to type out the report, I had no idea of the rigorous scrutiny that a report like this would be subject to. It's not like an academic article that nobody ever reads, it's not like an op-ed piece that's forgotten the next day. People look at this and now, maybe 20 months down the road, I still stand by the vast majority of what was said in the report and I think it's as powerful a document today as it was at the outset.

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I would like to say, however, that it does feel very good to be here at the committee stage. There were a number of occasions along the road where it was perhaps a bit touch-and-go whether we would ever get this far. I'd like to take the opportunity to commend the many concerned community groups, agencies, consumers and families who were able to persuade a sometimes-reluctant Ministry of Housing that this was an important issue, that it was an issue worth acting upon. I think a great deal of credit goes to the community for their concern and their very effective use of my documents.

The first thing I'd like to say substantively is to commend and to strongly endorse the government's decision to extend landlord-tenant coverage to some 50,000 vulnerable adults across the province of Ontario. Since the report was tabled I have been saying repeatedly, and to anyone who would stop long enough to listen, that I considered landlord-tenant coverage the single most important recommendation in the report. I'm very, very pleased that it's now going to be acted upon.

I'd like to explain why I think landlord-tenant coverage is so important. The first issue, I think, is whether it is necessary to act at all. I did have the luxury of reading through the Hansard for first and second reading. It's an

interesting experience. It was clear—I think everyone who spoke seemed to agree—that it was appropriate to act, that there is a problem, that there's been a problem for a long time.

The history of the problem is really quite straightforward. For nearly half a century now, really since 1960 we began shutting down psychiatric hospitals. We began closing down the large institutions for persons with developmental disabilities. We reduced dramatically the rate at which we were institutionalizing our senior community.

The problem, and this extends back for years and years and years, is that we never developed adequate community supports to enable these people to live in a proper way in the community. We had a quote from a former Minister of Health at one point who said explicitly that the Ministry of Health's responsibility to the psychiatric population ended the day they walked out the door. That has been the dominant view for a long time now.

We wound up with a lot of people in the community without any proper supports, without anywhere proper to go. They wound up in what we're now calling care homes, which in many cases are simply dumping grounds. They are places where we put difficult social problems. One municipal official explained to me that in his community they were able to use this type of accommodation to get difficult people off the streets. I'll explain more about that a bit later.

The second question, I think, is why landlord-tenant is the right way to go, why landlord-tenant is the right way to act. We considered two basic approaches towards the problem. One of them, which was asked for at various times by the long term care association, by some families, was what we can call comprehensive regulation. This has an initial very considerable attraction to it because it simply says that if there's a problem, government should go in and fix it up.

But if we look at what comprehensive regulation means, it means a number of things. It means, first of all, government must set standards; second, government must have the authority to inspect and to enforce these standards; third, government must have the authority to punish for violations of the standards. In many cases, government will have to pay.

What this would mean, in effect, is we would be creating an entire new set of nursing homes. To create a new set of nursing homes at this point would be totally contrary to the directions of long-term care. It would be amazingly expensive. I would challenge the long term care association or anyone else to tell me where we are going to get the money from at this point to develop that kind of comprehensive regulatory system.

An inspection system, if it is to be meaningful, is very labour-intensive. You've got to have a lot of inspectors and you've got to make sure they don't get too close to those they're supposed to be inspecting. If you don't have enough inspectors, the exercise is meaningless.

What we recommended instead was a rights-based approach with very limited regulation in a couple of very specifically identified areas. A key point of a rights-based

approach is coverage under the Landlord and Tenant Act, because Landlord and Tenant says to the residents of care homes that they have the same rights and they have the same responsibilities as everyone else living in the community; that they're not going to be subject to some kind of differential and second-class, in my view, status; that the residents' rights to remain in what is their permanent accommodation will no longer be contingent upon the whim of the landlord. That's what happens today with 50,000 people: The landlord can say to them, "You are gone," and 10 minutes later they can be gone.

The Globe and Mail had a big feature about this, describing what it called "green garbage bag evictions," which is the scenario in places like Parkdale where they put someone's meagre belongings in a green garbage bag and in 10 minutes it's out on the porch and the person is gone. But the same thing can happen in a luxury retirement home, and let's be clear about that.

The long term care association, in the material it submitted to you earlier, said that I was primarily concerned about the boarding homes. That is incorrect. That is a misrepresentation of my position. The problems occur right across the spectrum. There are different problems at times at the top and different problems at the bottom. Rent control is not a big issue in Parkdale. But the issues in principle apply across the board.

This report has one chapter that deals primarily with the retirement homes, one chapter that deals primarily with boarding homes, and the whole rest of the report deals with both areas together.

Coverage under Landlord and Tenant, then, also endorses the government's recent initiatives—and, again, this is for a number of years now—in the direction of long-term care, because it's saying that instead of building big new places to dump people, we're going to try to enable them to remain in their communities, we're going to give them the rights to remain in the communities and we're going to, over time, assist them to remain in the communities and give them all the rights and responsibilities that accrue to anyone else in the community.

There are two particular areas that I'm quite concerned about in terms of the government's response, or non-response, to date. I'd like to lay them out before you.

The first of these is that I am very apprehensive about the domiciliary hostel system. This is a program that is funded through MCSS under general welfare. It provides accommodation for about 4,500 vulnerable adults across the province. Operators of homes can be paid up to \$1,000 a month to provide room, board and what are called limited care services. Typically, they will house four people in a room. That's an income of \$4,000 a month per room. For \$4,000 a month you can rent a home in Rosedale, not a room in Parkdale. In many cases, operators provide very, very little in return.

I was called last week or the week before by the media in Windsor, where they have one very large home with 450 beds. I call it a warehouse, and that's what it is. In that home an elderly woman left at night because there was no one there to watch her. She wandered down the street and knocked on somebody's door who opened the door and took her in. The home called the police. The

police knew, of course, where she came from. When they called the home to come and get her, the staff person from the home who showed up didn't even bring a coat along.

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The other issue that's very important in this context is another large home in Windsor which was run by the former head of the long term care association, the local branch. This is the man who appeared opposite me whenever I was at any event in Windsor and he was there to say how wonderful things were. This man was subsequently charged with eight counts of fraud and theft involving \$140,000 of residents' money. The case was settled with a plea bargain and when last heard from—at least when I last heard about him—he was off in Florida. But one of his homes went into receivership and the receiver found that he was paying under \$1.50 a day for food for these residents.

In my report I call for the phasing out of this system as soon as possible. I do not call for its immediate closure, because 4,500 beds would be very difficult to find overnight, but I do call for a commitment from the government, from the Ministry of Community and Social Services, to phase out this system as soon as possible. It is an anachronism. It costs up to \$50 million a year and the accountability, even the fiscal accountability, for that public money in many cases is negligible.

I am very concerned, because after the report was tabled the response for this issue has been buried in MCSS. I'm very concerned about what is going to come out. Nothing has come out yet. I'm sure it will come out as part of the welfare reform package, but I would just like to indicate that it is a part of the package that we shall be watching very, very closely.

The other issue I just want to raise much more briefly is a second matter of concern, and that is that in many cases in the care homes of Ontario there is a lot of improper, inappropriate medical care that is being delivered. I would like to urge the members that as they pay attention to and concentrate on abuse of OHIP, I'd like to point out that abuse also is perpetrated by care givers, by doctors, on occasion.

I visited one retirement home not far from here where the 40 elderly residents were lined up in the hall because the doctor was coming for his weekly visit that afternoon. That doctor would bill for 40 home visits in a period of an hour and a half or two hours. I would call upon the Ministry of Health to pay attention to this and to take some action to ensure that this kind of thing doesn't happen too much more.

I would also, in closing, like to indicate, on the issue about the zoning changes, many members have suggested that two orphans have been scotch-taped together here. My report does comment on the zoning issue, and what the government is doing in terms of Bill 90, recycled, is fully congruent with the recommendations of my report. So I am not at all uncomfortable about being attached to the zoning changes. I think they are long overdue.

Having said that, I would simply like to indicate, by way of summary to my comments, that I am very, very

pleased about the government's decision to extend Landlord and Tenant coverage. I think it is an extremely, extremely important action. I would also like to say that it is necessary but it is not sufficient. There's lots more. We look forward to further action and further important steps towards normalization and integration into society for some of society's most vulnerable members.

With that I will close and I would welcome comments or questions.

Mr Winninger: Thank you for your presentation, Dr Lightman. If time permits, my question has two parts. The first part builds on your latter comment about not resisting being linked in with the zoning changes in Bill 120. I would just like to read a comment you made in your report and ask you to elaborate a bit on it.

You say in your report:

"Accessory apartments provide an important source of inexpensive housing even in communities where municipal zoning rules render them illegal. This illegal status often disempowers residents as lack of coverage under the LTA may subject them to capricious behaviour and precipitate eviction by landlords. We wish to indicate strongly, and unequivocally, that we find exclusionary zoning practices by local governments both offensive and unacceptable."

I wonder if you could elaborate on that for us.

Dr Lightman: It certainly sounds like my language. I'm not sure how to elaborate upon it. The analogy that came to my mind as I've been following this in the press is that of families that have an illegal nanny living in their home. As long as the nanny is there, does her job, doesn't cause any trouble, everything's fine. But if she tries to question anything or to assert any of her rights, you immediately call Immigration and she gets deported.

It seems to me there's a very good analogy between that and the current illegal basement apartments, that as long as people don't try to assert any of the rights that they would otherwise have, let us say, under the Landlord and Tenant Act, everything is fine. The first time they open their mouth, you call the municipality, they come, the family is evicted fairly quickly and, the day after, you can rent the apartment again.

The accommodation is there; it serves a need for landlords, it serves a need for residents. The residents need somewhere to live, the landlords want the money or they wouldn't be doing it. It seems to me the role of the province is to bring this in line, to regularize it and to bring them within a more effective public purview than has been the case so far.

Mr Winninger: Time permitting, Mr Chair, I have a follow-up question. I see the linkage you're drawing, I think, here between protection of tenants who happen to be in apartments in housing and vulnerable people in care and retirement homes.

Dr Lightman: Yes.

Mr Winninger: The question I have relates back to some of the cautions, if I can call them that, from the Ontario Residential Care Association that presented earlier, concerns about how we move out people who constitute a hazard.

The Chair: Are you looking for a response?

Mr Winninger: A response from Dr Lightman. How do we move out tenants or deal with tenants who might create a safety hazard to other tenants, particularly those who become incompetent? Is that a concern of yours?

Dr Lightman: The analogy is that of a person residing in their own home. If I'm in my own apartment and I'm slowly or rapidly declining and I'm not causing trouble for anybody else, it seems to me that the state has no right to interfere. On the other hand, if I'm causing trouble or a difficulty for somebody else, then there are provisions under the Landlord and Tenant Act to remove me. If I'm interfering with the enjoyment of the premises of other people or endangering property, the Landlord and Tenant Act does provide provisions.

The difficulty with what the long term care association is asking is that what they're asking for is that they should have the unilateral right to determine when a person is to leave their own home, and this is unacceptable. There are cases where the operator will say to a resident: "I think you need to buy 24-hour nursing care, and in fact you're going to buy it from us or from an allied company. If you don't want to buy that, I'm sorry, we can't look after your needs. You're going to have to be gone." That's blackmail.

Mr Grandmaître: A very short question, Mr Chair. Mayor McCallion was just before us, and I'm sure you heard her presentation.

Dr Lightman: I heard, yes.

Mr Grandmaître: She told us that AMO or the mayors of the GTA were not consulted. Would you agree with this?

Dr Lightman: I have no idea what happened with the bill. During my exercise I received written correspondence from AMO; I received a written submission which we treated with the proper care.

Mr Grandmaître: So you did—

Dr Lightman: Yes, absolutely, and we also had considerable contact with OMSSA, the Ontario Municipal Social Services Association. We had more contact with OMSSA than AMO actually.

Mr Grandmaître: You just said that you were pleased that the ministry accepted your zoning change approach. Where did you get your expertise if you didn't consult with mayors and municipalities?

Dr Lightman: Consulting doesn't mean I have to agree with them. We consulted with them, I heard what they had to say, and I also consulted with legal aid clinics and people on the other side. On balance, I didn't accept that position.

Mr Grandmaître: Yes, but you didn't consult with them.

Dr Lightman: I received a written submission from them. There was a notice sent out that if people wanted to appear with me or come and meet with me personally—there were all kinds of ads. This was very widely publicized. AMO didn't choose to come and contact with me and I, as a matter of policy, did not go out and ask people in general, except service providers

directly. But aside from service providers, the onus was on agencies or the community to—

Mr Grandmaitre: To get in touch with you.

Dr Lightman: Yes, but this is quite normal with a commission of this sort.

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Mr Cordiano: Dr Lightman, you've read Hansard and you've read some of the comments I had to make, but I'm going to reiterate some of the concerns that I have. As well, I think they coincide with some of the things you've had to say, in particular fast-track eviction. In your report you had some concern about that. Obviously, in this Bill 120 that is not dealt with. There are no provisions under the Landlord and Tenant Act to deal with unruly behaviour of a tenant who jeopardizes the safety of other tenants. Do you not see that as a major flaw in the bill that needs to be amended?

Dr Lightman: In my report I recommended a fast-track procedure because I felt there were circumstances where this was necessary. The specific details that I recommended, the technical details would not work as I recommended them. I could go into it but I was convinced. But that's not relevant, I don't think. I still think there is a problem. I think really the ministry would have to explain why it didn't feel that—

Mr Cordiano: The minister was here yesterday and she could not explain. She did not answer my questions on that and I think that—

Dr Lightman: Sir, I'm not responsible for the bill.

Mr Cordiano: I'm just telling you the events yesterday. I think that it's necessary for us to be as constructive and as responsible as we can. That section of the bill needs to be amended and we will be putting forward amendments.

Dr Lightman: I have received by fax a couple of suggestions from different community groups. The Christian Resource Centre has suggested an approach and you'll be hearing tomorrow from another group as well. They at least would solve the technical details, the technical difficulties that were in my recommendations.

Mr Cordiano: The other area, because I'm running—

The Chair: Thank you, Mr Cordiano. Mr Jordan.

Mr Cordiano: One final question. I can't get at this.

Mr George Mammoliti (Yorkview): The minister did answer your question. I was here.

Mr Jordan: Thank you, Dr Lightman. I certainly appreciate your presentation this morning. This is more or less a follow-up from the mayor's presentation earlier. How can you, regardless of how strongly you feel about these issues, really support the throwing away of 50 years of planning through official plans for a municipality, zoning bylaws that control development in such a way that you can have recreation, you can have schools, you can have all the support groups required for a certain population in that area? Now you're saying, "I'm going to get rid of all of that to be able to bring forward my solution as presented to these problems."

Dr Lightman: I don't think I'm throwing away 50 years or I'm recommending throwing away 50 years of

anything. I think there are different priorities here and I think the rights of the residents of these apartments to have—

Mr Jordan: But that's what brought in planning in the first place.

Dr Lightman: But obviously it hasn't worked or we wouldn't have a problem.

Mr Jordan: Then let's improve on it, not throw it away.

Dr Lightman: Maybe we've been trying long enough to improve on it and maybe we need landlord-tenant coverage and maybe we need a legal status for the apartments. As long as the apartments are in this illegal or quasi-legal status, the residents do not have the basic rights that someone would have in a high-rise apartment building, and to me that is the central, most important issue. The others are important, I certainly wouldn't dismiss them, but I think the most important issue and the central theme of the entire report is that the residents are the most important players in the analysis.

Mr Jordan: Yes, I agree with you that the residents are certainly most important but so are the services that these residents require, in the light of education, in the light of recreation, in the light of health care. Now all of a sudden we have a community that was planned for 10,000 and it could go to 15,000 very easily, but who's going to plan ahead for these other services?

Dr Lightman: In many cases that community already is at 15,000 because we have all these people living there. You can't suggest that we're starting with a clean slate. If we were starting with a clean slate then it might be a different scenario, but the people are there already and all I'm saying is that they have to be given a legal status. You can't treat them like they're illegal nannies, and that's the way they're treated at present.

Mr Jordan: Then, doctor, my bottom line is, why not leave some control with the mayors and councils and the people of the community so that they can in fact upgrade, if you will, these illegal situations and take care of them, identify them and so on? They want to have accessory units but they can't have them in their community without some control and some knowledge of where they are.

Dr Lightman: I speak only for myself. I don't speak, obviously, for the ministry or anybody else, but in my own personal view the municipalities haven't done an adequate job. The housing policy statement which came out in 1988 or 1989 hasn't been acted upon. I think we've been waiting for the municipalities to clean up their act, if I can use that phrase. We've been waiting long enough and I think it's time to act now.

Mr Jordan: And you feel this is the way to do it then.

Dr Lightman: I think this is one way to do it, yes.

Mr Jordan: I'm sorry. I can't, no matter how I try to rationalize—

Dr Lightman: That's okay.

Mr David Johnson: It would be interesting to see you run for office, run for mayor, run for councillor.

Dr Lightman: I'm an academic. That's hard enough.

The Chair: Thank you, Dr Lightman, for coming here this morning.

Mr Sean G. Conway (Renfrew North): Pardon me? You're an academic and that's hard enough. Is that what I heard?

Dr Lightman: In my department it's hard enough.

The Chair: Thank you, Dr Lightman, for appearing this morning. I'm sure we'll hear your name many more times over the course of the next four weeks.

Dr Lightman: Thank you for the opportunity to address you, and I wish you well in the rest of your consultations.

Interjections.

The Chair: Could I have some order, please.

PUSH ONTARIO

The Chair: The final presentation for this morning is Persons United for Self-Help, Sam Savona. Good morning and welcome to the committee. The committee has allocated one half-hour for your presentation. Following the oral presentation, the committee always enjoys some opportunity to have conversations through questions and comments. You may begin.

Mr Sam Savona: My name is Sam Savona. My helper, my right-hand person, is Jennifer. Jennifer will give reasons why I rose, and then after, if anyone has any questions, I'll answer.

Ms Jennifer Pritchard: Shall I begin?

The Chair: Could you introduce yourself for the purposes of our Hansard reporting service.

Ms Pritchard: Okay, Sam just did. My name is Jennifer Pritchard and I am a colleague of Sam's at PUSH Ontario.

Since the early 1970s, with growing pressure to deinstitutionalize people with disabilities, the provincial government initiated the closure of many facilities. Tragically, little or no funding was provided for safe and assured housing within the community, rendering thousands of disabled individuals without adequate shelter.

Instead, people with disabilities reside in hospitals, including remaining mental institutions, nursing homes, rest homes, rooming homes, rooming houses and apartments, in addition to support service living units. Generally, people with disabilities receive some form of care giving in addition to their housing.

Tenants with disabilities confront other obstacles. The issue of accessibility is long-standing. Individuals with mobility impairments, including those in wheelchairs, are hard-pressed to get into many buildings, apartments and houses. Once inside, people with disabilities face difficulties in accessing the laundry, recreational and waste disposal facilities. Problems around physical access impact as well upon those who are visually impaired. These circumstances leave most tenants in a position of vulnerability.

Furthermore, like other low-income tenants, these people are at risk of unjust treatment by unscrupulous landlords who often have control over where people with disabilities live, whom they live with and the amount of

rent paid for accommodation. Moreover, people with disabilities tend to be dependent on their landlords for attendant care services such as meals and daily living activities. These circumstances are known to leave tenants with disabilities vulnerable to violations ranging from intrusions into issues of personal choice through sexual and physical abuse.

In 1992, the Report of the Commission of Inquiry into Unregulated Residential Accommodation, the Lightman report, was published, disclosing shocking truths about the living conditions of many people with disabilities. These findings have served to increase the demand for more humane housing throughout the disabled community of Ontario.

In October 1992, PUSH Ontario also had initiated its own project which would assist people with disabilities to obtain their rights as tenants of Ontario, the Tenant Rights Advocacy Project, TRAP. As part of this project, we have been recording calls from tenants with disabilities complaining about their experiences with service providers, who in many cases are also their landlords. Most of the residences involved are support service living units where personal care such as attendant care services is provided.

Some of these complaints are recorded in the attached document, "Situations Facing Tenants with Disabilities." Some of you may already have read or heard about this document, but I feel it is important to keep these stories at the forefront of this exercise because these are the deputants you should really be hearing from.

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The most difficult problem we encounter when talking to someone in a residence where services are being provided is to guarantee them that they will not be victims of retaliation taken against them by their care givers. Residences where services are being administered are exempt from the Landlord and Tenant Act, which means that the tenants are without protection against eviction or other withdrawal of services. People in support service living units, group homes and retirement homes rely heavily on their care givers for their daily basic needs. The slightest threat by their care giver of withdrawal of services would discourage the person from complaining publicly. It is very rare that we find someone who would take the risk to go public with their complaints. When someone does come forth, they are not only risking the danger of their own life but the lives of their family members. Some tenants in these circumstances often are single parents.

Until recently the government has turned a blind eye to these tenants with disabilities. If it wasn't for the lobbying tactics by the roomers and boarders coalition and organizations such as ourselves, we might not be here at this stage of the game. On November 23, 1993, the Honourable Evelyn Gigantes announced Bill 120 and with this announcement sparked a glimmer of hope in thousands of vulnerable tenants with disabilities. This glimmer of hope is in anticipation of having their basic rights as tenants finally recognized. You might think I'm being overly dramatic at this point, but try and place yourself in this predicament.

You are around 20 years old and up until a year ago you've been living in a hospital since your early childhood. While living in this hospital you've been told what to do, ie, when to wake up, when you could eat, who can visit you and when you can go out for a breath of fresh air. You've been also made to feel you are not capable to make your own decisions. You rely on others to assist you with basic needs, such as bodily functions. A year ago, you moved into an SSLU where now the tables have been turned around and you direct your own care.

For months you've been experiencing difficulties with staff such as verbal and physical abuse, but the management fails to look into the matter. In fact, the manager tells you you should be grateful that you have a place to live. Furthermore, they even go as far as saying, "If you tell anyone outside, your services will be discontinued." To a person in this predicament, they would be so terrified that they put up with the abuse in order to keep their home.

Bill 120 is a step in the right direction. It gives tenants with disabilities an equal playing field with their landlords and service providers. You may have or will be hearing from administrators opposing this bill. I just have one question for you to ponder over while you are listening. If these administrators operating mental institutions, nursing homes, rest homes, rooming houses and SSLU apartments really care for tenants with disabilities and are offering a safe and harassment-free place to live, then why are they so opposed to Bill 120, a bill which would protect human dignity?

The Chair: Thank you. The members have questions. The official opposition.

Mr Grandmaitre: You say that administrators opposing this bill are wrong. Well, I've met quite a number of them and I've visited a number of those homes, well-kept homes, great care, excellent care I should say. They told me very plainly, how come the government doesn't inspect the unregulated homes and bring them up to par instead of punishing everybody? What do you think of that comment?

Mr Savona: Well, I think that they shouldn't do that. But in nursing homes, it's been known that abuse has been happening within those facilities as well. When you are talking to administrators, they're going to pick a person for you. There's no doubt about that.

I myself have been in facilities where, when they had open house, more visitors could come in and see the facilities. There was a grand show. They would even instruct the residents how to act. They would even threaten them that if they didn't act appropriately, they were going to be punished. The people should be part of the group and not the administration. They are the residents. You're talking about their home, their rights, not the administration.

Mr David Johnson: I would certainly like to thank you for bringing this deputation. I don't think there's anybody in this room who doesn't agree that there certainly have been abuses in the past and that they need to be addressed.

I guess the question perhaps that we have to address

is—it has certainly being put forward, and I frankly agree, that the majority of the operators are good operators, are treating people well and are operating to the best of their ability, but certainly there are some operators who are perpetrating these abuses—how to deal with them and how to make sure that this doesn't continue.

One of the questions that was put forward by the Ontario Residential Care Association was that over a period of time, a person's level of service requirements may change. Some of the operators may be able to deal with a care service up to a certain level, but then beyond that level, they may not have the facility, the ability to provide that care.

Yet the act would require that the person be allowed to stay there, if the person chose not to move, even though the operator may not be able to provide that level of care. I think what we heard from Dr Lightman before was that as long as the person isn't providing trouble, indeed they should stay there.

I see a problem there. Certainly the operators see a problem there. If the care can't be provided and the person refuses to move, what's going to happen? Is the operator going to be compelled to do it somehow or is the person not going to get the care? What's going to happen? I wonder what your response would be to that, because the Landlord and Tenant Act, which now comes into sway, would say that the person can't be evicted.

Mr Savona: Where I live now is Metro housing and we have many elderly people living there, and from time to time, I witness a person deteriorating. What do they do? What do landlords do when anybody, even yourselves—I hope it doesn't happen, but when you deteriorate, your landlord may evict you because you're deteriorating. I don't have all the answers, but there are people in that situation outside of institutions that are covered under the act now, and what do they do? All we ask is to be treated as anyone else. We know we have disabilities, but let us worry about that.

1150

Mr David Johnson: That's fair enough. You should be treated like anybody else. I'm not sure we have all the answers either. I agree, "evict" is a strong word, but I guess if a person needs a different level of care, I would hope the ability would be there to look at providing the person with the kind of accommodation that they need and it may not be in the—I guess the question has arisen. It may not be in the facility that they're in right at that point in time. Maybe they should be somewhere else. But if the person just totally disagreed, notwithstanding the circumstances, this act would prevent it.

Mr Savona: But doesn't that happen now in a regular apartment building when a person gets older and starts deteriorating? Does the landlord evict them? No. They don't interfere. Maybe they do, maybe not, but they don't.

Mr David Johnson: So you think they would automatically shift somehow? If a person gets older in an apartment building and they need care, if they're living in an apartment without care, then obviously the landlord wouldn't be able to provide care; that wouldn't be their

business. But the person would hopefully, automatically I guess, somehow move to a place where they could get the care that they need.

Mr Savona: I agree. Then why don't you allow that choice to everyone else?

Mr David Johnson: That's a good question. Has my time expired?

The Chair: A minute perhaps.

Mr David Johnson: I understand that there seems to be a great deal of concern about the security of services, I think, and perhaps tenure. But beyond that, if you were to say one aspect of this bill that's important to you, what would that aspect of the bill be?

Mr Savona: That we have the same rights as everyone else under the act.

Mr David Johnson: In terms of?

Mr Savona: You talk about services. If a landlord is our service provider, that they won't jeopardize our services. Let's say I was making a lot of noise every night or I wasn't paying my rent on time. Under this act they wouldn't be able to withdraw the service in order to get me out of there. If they want to deal with me and my lateness in paying my rent, then do that in the proper manner.

Mr Gary Wilson: I'd just like to make a comment and perhaps ask Mr Savona to elaborate on some of this discussion because both the questions from the opposition side have, I think, probably with relation to what the circumstances are, unfairly highlighted the care home operators who are negligent. The majority will not be threatened by anything in Bill 120 because they already are providing the service and the accommodation that are needed.

There are some that have been highlighted in the various consultations that need to be brought into line to make sure that the accommodation is provided, but I think Mr Savona has clearly shown that the criterion that we're trying to follow here is to treat the residents in care homes the same as anybody else, the same as a resident anywhere else. In fact, that highlights the term for Bill 120, which is "residents' rights."

The resident of any kind of accommodation should be treated the same as anyone else. That is what the legislation is attempting to achieve, and of course, as Mr Savona has clearly shown, it's the residents themselves who should be providing the insight into whether the accommodation and the care are appropriate.

I would like to know, first of all, is that essentially the way you see it?

Mr Savona: Yes.

Mr Gary Wilson: In your experience, have conditions been improving in this way for you and what would you like to see with regard to accommodation and care?

Mr Savona: Again, I don't know if this is the right avenue, because I think it has to do with long-term care issues being intertwined, but I can only give my own experience about where I'm living right now. The supervisors and the board are great. They have at least 50% representation of the residents themselves and the

president, which I am now, and the vice-president are both people with disabilities. It shows how the residents can be a part of management, and then that would be like a watchdog over the administration.

Mr Gary Wilson: So you're saying the residents or people with disabilities should have a greater role in the management.

Mr Savona: Yes. Well, maybe not the management, because you're going to get into a conflict of interest, but at least the board of directors. I've always had this idea back in my mind that residents who would like to be on the board of directors might be able to be on other boards instead of their own board.

Mr Gary Wilson: To broaden your participation in other activities in the community essentially?

Mr Savona: Yes.

Mr Gary Wilson: I do see this then as a very strong push towards that goal. Thanks very much, Mr Savona, for your presentation.

The Chair: Thank you, Mr Savona, for taking the time to come down and meet with us this morning. We appreciate your presentation.

Mr Savona: Thank you.

The Chair: For the committee members, I would remind you that the committee will meet promptly at 2 o'clock to hear presentations. We'll see you at five minutes to 2.

The committee recessed from 1200 to 1403.

METROPOLITAN TORONTO ASSOCIATION FOR COMMUNITY LIVING

The Chair: The standing committee on general government will come to order. The business of the committee is to deal with Bill 120, An Act to amend certain statutes concerning residential property.

The first presentation this afternoon will come from the Metropolitan Toronto Association for Community Living. If you'd like to all just have a chair at the microphones, the committee has allocated one half-hour for your presentation. During that time it's often interesting for the members to use some of it to ask you some questions and listen to your comments. You may begin by introducing yourself.

Ms Doreen Crystal: My name is Doreen Crystal. I'm past president of the Metropolitan Toronto Association for Community Living. I have with me this afternoon Fred Reynolds, the executive director of the association, and Angie Hains, who is the director of independent supportive living services.

The Metropolitan Toronto Association for Community Living has been serving persons with developmental disabilities and their families in the community since 1948. It currently provides support to approximately 4,000 individuals and families. Services provided include preschool integration programs, supported work programs and employment training services, family support and protective service workers and group homes and supported apartments.

There are two points I would like to make clear about MTACL's position on Bill 120.

(1) For many individuals with developmental handicaps Bill 120 will not have an impact because they are already living in accommodations covered under the Landlord and Tenant Act. This group is made up of individuals who are able to live successfully in regular accommodation and have their support needs met offsite. Our concern is only with the group of individuals living in residential programs under the Homes for Retarded Persons Act and the Developmental Services Act.

(2) MTACL's position on Bill 120 is different from that of the Ontario Association for Community Living. MTACL's position is based on its experience gained through operating residential programs for individuals with developmental handicaps for over 30 years. It is also based on its understanding of the relationship between issues involving both security of tenure in housing and the supports and services which make it possible for an individual to live safely and securely.

MTACL operates 48 group homes and a supported apartment program in which a total of approximately 600 individuals live. These residential services are funded by the Ministry of Community and Social Services and operate under the Homes for Retarded Persons Act and the Developmental Services Act. Our residential services are currently exempt from the Landlord and Tenant Act.

One of the key directions presented by the Ministry of Housing in its housing framework for Ontario was the concept of delinking. The expectation is that the support service component and the housing component should be distinct and separate. A person's tenancy should in no way be affected by his or her support service needs. In fact his security of tenure will be guaranteed under the Landlord and Tenant Act.

The concept of delinking is not easily reconcilable with well-established service systems such as ours in which the housing and support services have been intentionally linked. While a delinked approach is possible for those who are able to have their support needs met offsite or those whose support needs are minimal or temporary, it is not currently possible for those whose support needs are extensive, lifelong and must be provided where they live. For this group, the acquisition of housing is meaningless unless adequate onsite supports are also available.

The Ministry of Community and Social Services recognized this fact when the linked residential programs were established. Each residential program has a legal agreement with the ministry which specifies not only the location of the housing but the number of people to be served, the type of service and level of staffing to be provided, as well as the budget for the program. The Homes for Retarded Persons Act also specifies the type of care each individual in a residence under the act must receive. For example, regulation 500, section 7 states that it is the responsibility of the board of every approved home and auxiliary residence to:

"(c) ensure that each resident receives, at all times, care adequate for and consistent with his individual needs; and

"(d) ensure that each resident receives an individual program of training designed to increase the resident's mental, social and physical development."

Regulations such as these are not consistent with the delinking of housing from support services. Neither are they consistent with the image of unregulated care facilities widely presented in the media at the time of Bill 120's introduction.

The needs of 600 individuals who live in MTACL's residential programs vary greatly. Some individuals are profoundly handicapped and require physical assistance with all activities, for example, feeding, toileting, bathing. Others have additional disabilities including cerebral palsy, severe visual or hearing impairments, seizure disorders, psychiatric illnesses or a variety of other conditions which create medical fragility and require a wide range of supports and services. Still others have less complex needs but require regular, consistent in-home supports to live successfully in the community.

Individuals in service are typically grouped so that those with similar needs live together. In this way, the staffing pattern and the additional supports required can be geared to meet the needs of the group. An individual who needs a great deal of staff attention will share a house with like individuals so that the staffing can be provided and resources made available in a coordinated and cost-effective manner.

As an individual's needs change, it is sometimes necessary that he or she move to a different location within the service system where more appropriate supports and services are available. In all recent expansions of MTACL's residential services, the Ministry of Community and Social Services has required that individuals currently receiving service move to other locations within the system in order to make residential spaces with the appropriate support component attached available for those who are being returned to the community from institutions.

On occasion, the behaviour of an individual constitutes a threat to the health and safety of other individuals with whom he or she lives. There are also instances where an individual decides, after having moved into a residential placement, that he or she wants no part of the service provided within that placement.

The Landlord and Tenant Act certainly provides due process for eviction but does not provide any remedies for the situations I have described. An individual may refuse to move for reasons such as fear of change or the lack of cognitive ability necessary to understand the proposed change or the reasons for the change, even though remaining in an inappropriately serviced setting may jeopardize his own health or safety or that of his roommates.

Even though there are a number of individuals who move from one location to another within MTACL's residential service system, there are very few who leave the system completely. Of 600 individuals in residential services in 1992-93, only 13 left the system. Seven of the 13 went to chronic care facilities because their medical conditions had deteriorated significantly, three returned to live with their families, two no longer wanted to receive service and moved to boarding homes, and one moved out of Toronto to live with friends. In each case, staff of MTACL arranged for other accommodation and services

where necessary. We are committed to providing security of tenure within residential programs for the developmentally handicapped. This includes having both housing and services which are appropriate to the individual's needs. It is our contention that security of tenure should be viewed within the residential program at a particular agency rather than at a specific address and should be guaranteed by a process less formal and intimidating than that provided under the Landlord and Tenant Act.

We recommend that:

(1) Non-profit community-based agencies providing residential services to individuals with developmental handicaps under the Homes for Retarded Persons Act and the Developmental Services Act continue to be granted an exemption from the Landlord and Tenant Act.

(2) Boards of directors of non-profit agencies providing residential services to individuals who are developmentally handicapped be required to ensure that policies and procedures are in place which will allow residents and their representatives due process in any dispute arising with respect to tenure; have individual occupancy agreements which address issues of tenure; provide all reasonable assistance in providing alternative accommodation when necessary.

Thank you. We would be pleased to answer any questions that you have on the presentation.

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Mr David Johnson: This seems similar to a deputation that we had this morning from the Ontario Residential Care Association, that people need different levels of care and their care over a period of time, I guess the care that they need changes and there needs to be flexibility within the system. I guess you're telling us that basically you're going to have a problem if the Landlord and Tenant Act applies to you. Is that the essence of it?

Mr Fred Reynolds: That's it exactly. Very clearly, it will hamper our ability to manage and to in fact provide the best kind of support and services to the people who are depending on us.

Mr David Johnson: I think this is the situation that we had before. There could be a number of different circumstances, I guess, where this would arise. I guess you've outlined them here. In general, you've said what you feel should happen. Will you be bringing forward specific amendments that would encapsulate the recommendations that you have on page 5?

Mr Reynolds: We didn't make any attempt to phrase these recommendations in the appropriate language to actually serve as amendments to the bill. We just wanted to bring forward the concepts and the principles that we thought would give us a problem.

Mr David Johnson: If this goes through in its present form without any change, what impact will it have in terms of an expansion of the service that you give?

Ms Crystal: We wouldn't be able to expand at all. As a matter of fact, we would probably lose some spaces because of the additional support that would be needed in order to carry out the recommendations in the new act, which is very difficult for us, considering we have approximately 1,500 people on a waiting list waiting for

residential services. That's just our waiting list; that does not include all of Metropolitan Toronto.

Mr David Johnson: You serve 600 people at present?

Ms Crystal: No, we serve 4,000 people but—

Ms Angie Hains: But 600 in residential services.

Mr David Johnson: So 600 in residential and 4,000 in terms of outreach programs, is it, or how does that work?

Mr Reynolds: There's a whole variety of services that we provide. For instance, day program services: We have approximately 800 people who are in full-day programs. There's another group that's relevant as far as the residential part is concerned, the group we made reference to in the presentation.

We have a large group of people who are somewhat more independent and they live in the community in places of their own choice relatively independently and we have a number of adult protective service workers who provide minimal support to those people. So that number is included in the list. We have preschool programs, we have family support workers who work with families and individuals so that the service—to get to the total of thousands, there's a whole lot of different kinds of services with varying degrees of intensity.

Mr David Johnson: But it's all excellent work for sure and it's all required. As you say, you have a waiting list of 1,500 people for the residential—this is for the residential care?

Ms Crystal: Yes.

Mr David Johnson: Just within Metropolitan Toronto?

Ms Crystal: That's just on our waiting list. There are other agencies in Metropolitan Toronto that provide similar services that have their own waiting lists.

Mr David Johnson: You're certainly speaking in terms of MTACL. Are you speaking on behalf of other agencies as well in that regard?

Ms Crystal: No. The other agencies in Metropolitan Toronto I believe will be doing a presentation at the end of next month or this month, the MARC agencies, the Metropolitan Agencies Representatives' Council, which is comprised of approximately 50 agencies in Metropolitan Toronto. I believe about 25 of those provide residential services and they will be doing another presentation on the same issue.

Mr David Johnson: The basic problem is having the Landlord and Tenant Act applied here.

Ms Crystal: That's correct.

Mr David Johnson: If that somehow is removed, then you are able to live with the bill, are you?

Mr Reynolds: Absolutely. The underlying intent of the bill to ensure that people have their rights—we don't have any quarrel with that. In fact that's part of our business to ensure that the developmentally handicapped have their rights. But I guess our contention is that there are enough safeguards built into the system as it is now and to use the Landlord and Tenant Act would be a cumbersome, legalistic kind of procedure that we don't feel is really necessary.

Mr David Johnson: Within your sphere of service delivery, is there any sort of overall monitoring agency you have at the present time? I know that some of the homes that serve the elderly have their own sort of self-regulating agency. Do you have that kind of thing?

Mr Reynolds: We have the provincial government, the Ministry of Community and Social Services, and we have a program supervisor from the ministry. All of our services are done on the basis of legal agreements with the Ministry of Community and Social Services, which specifies the kind of service we provide, the number of people, the amount of money that is going to be provided to us.

As a matter of fact, it's interesting you should ask that question, because right at the moment the children's group homes are very closely monitored by the Child and Family Services Act and by a licensing procedure. The adult homes are not monitored quite in the same way but they are monitored. We have a binder of regulations about that size that we have to follow. It's not in the form of legislation but it's regulations, at least guidelines that the ministry provides that we must follow. Part of the program supervisor's role is to ensure that those guidelines are followed.

Mr Gary Wilson: Thanks very much for your presentation. It certainly gives another viewpoint for our deliberations and is helpful from that point of view. Following up on something Mr Johnson drew attention to is that you do speak for yourselves and not for other groups in the city, and of course they will be coming forward. You do, though, specify that your view is different from the Ontario Association for Community Living and this is a field, I think, where I guess circumstances are changing, viewpoints are changing in how we meet the needs of people with developmental disabilities. I would like to pursue some of the things here and see whether you do see it in that kind of a context.

You point out in your brief that there are residential facilities where they are already under the Landlord and Tenant Act and that it's inappropriate. You're just saying in your facility or your group homes it's not appropriate. I think the question then is the degree or the association, the way, I guess, accommodation and care are linked. You seem to be suggesting that they are too interlinked, in effect, to be separated. I just wonder whether you could elaborate on that, because it seems to me this is the thing that you're bringing forward.

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Mr Reynolds: Yes, do you want to speak to that, Angie?

Ms Hains: No, you can.

Mr Reynolds: Let me give you an example. I think we've already pointed out in our presentation that we serve a wide spectrum of people. We have some group homes that serve people who are very low-functioning intellectually. They need assistance with toileting, bathing, even feeding in some situations.

To say that for that person you can separate the services from where they live just doesn't seem to be very practical to us. That person is not able to select

where they live, able to choose to move at a particular time because, where they might move to, the service wouldn't be provided. In other words, to live there successfully, they've got to have the service, and we just don't see how you can separate those two things. Then there are varying degrees of that on through the spectrum.

Mr Gary Wilson: Yes, that's right. I guess that is one of the main features of course with all of us. We all have different needs and capabilities. I think the one thing, though, that we are trying to highlight in this legislation—in fact that's why it is called residents' rights—is that we all share that need, I think, to have security of accommodation. As long as accommodation is a factor in wherever anybody lives, then we think there should be that security assured. That is one of the reasons why we are trying to include all types of accommodation.

Mr Reynolds: We don't disagree with you on that. We agree 100% that the security should be provided. What we do disagree with is the method that's used in order to provide that security, that's all. We don't disagree with the basic premises.

Mr Gary Wilson: Okay. You think that it's unmanageable or just that it would create more problems than you would be able to handle?

Mr Reynolds: Both, I would say. Take, for example, another kind of example that I don't think we've mentioned in here, and this is real life. This is not something hypothetical or a what-if. From time to time—well, all the time—we have individuals in our service who not only are intellectually handicapped but have some form of behaviour disorder, emotional disturbance, whatever, which makes it difficult for them to live with other people. Most of the time it's okay, but from time to time there will be episodes where this becomes a real problem.

For example, in one situation we had a young man in a group home who literally broke every window of the group home. Now what we had to do to deal with that situation, we immediately moved him from that location for the sake of his own safety, for the sake of the safety of the other people in the group home. If we had had to go through the Landlord and Tenant Act to have that person removed—it just isn't practical. We have to have the ability to be able to deal with situations on a fairly immediate kind of basis.

Mr Gary Wilson: But I don't think Bill 120 prevents you from dealing with them on an immediate basis. Obviously, I think it's recognized in that kind of case that you outlined that you would have to take immediate action that wouldn't call into question the Landlord and Tenant Act on those actions that you would take. It's only more long-term that the Landlord and Tenant Act would be called into question.

I think it is appropriate, though, to analyse what it is that caused the behaviour and then to take steps to deal with that, rather than simply—in some cases, I'm not saying that would happen in this case, but it could be imagined that the way of dealing with that case and others would simply be to evict the resident. That's what we're saying shouldn't happen.

Mr Reynolds: But we're saying that we would not do

that and that there should be safeguards against that happening. What we're saying is we would take the responsibility to deal with that in another way, and that's outlined in our recommendations.

Look at it perhaps in a more positive light for a moment. We've already talked about and agreed upon a wide spectrum of people. Our hope for people is that they will move through that spectrum. They start out needing a lot of support, they grow and learn and improve and move on, and hopefully they move on to the situation I described a little earlier where they are living in the community on their own in residential facilities that would be governed by the Landlord and Tenant Act.

However, in order to accomplish that, people do have to move, so the situation could very easily arise where a person is living in a group home, they're comfortable living there, their friends are there, they want to stay there, and yet, in their own best interests, to achieve further independence, they should be moving on. They don't need that support. Both economically speaking and from the standpoint of what's best for that individual, it's time for them to move on.

If that residence was covered by the Landlord and Tenant Act, theoretically that person could say, or his or her family could say: "We like to live in this group home. We don't want to move. We're going to stay here." How could you deal with that situation if you had to evict that person, if you want to use that term, on the basis of the Landlord and Tenant Act?

Mr Gary Wilson: Well, again, it comes back—

The Chair: Thank you, Mr Wilson. Mr Grandmaître.

Mr Grandmaître: You've been in business since 1948. How long have you been receiving funding from the Ministry of Community and Social Services? Since day one?

Mr Reynolds: Not exactly, because the whole issue of the services provided to people with developmental handicaps—it used to be they were referred to as mentally retarded—used to be an issue under the Ministry of Health, so funding used to come through the Ministry of Health. It changed in the 1960s, I believe. I can't tell you precisely the date under which they started receiving funding from the Ministry of Community and Social Services, but I would say that it's government funding ever since we started providing residential services. My experience only goes back 10 years with the organization.

Mr Grandmaître: But you're not only providing residential services for your clients or your people; you're also providing them with health care. Are you being funded by the Ministry of Health as well because you're providing those services?

Mr Reynolds: No, we're not actually providing the services. We make sure that the individuals who are in our services get health care, but we don't actually provide it. In other words, for people living in a group home, we make sure they have a physician who's looking after them, a dentist, an orthodontist if it's needed, or whatever. But the services are provided—

Mr Grandmaître: Outside.

Mr Reynolds: Outside, yes. But our responsibility is

to make sure those services are available to them and to encourage them to use them.

Mr Grandmaître: Did you have a chance to make the same presentation to Dr Lightman?

Mr Reynolds: No, we didn't make any presentation to Dr Lightman.

Mr Grandmaître: Did you have a chance to meet with the Ministry of Community and Social Services to explain the workings of your group? Did you have a chance to meet with them and say how dearly affected you would be by Bill 120?

Mr Reynolds: "Yes" is the answer, but on one occasion I spoke with the area manager of the Toronto area, Ministry of Community and Social Services, and asked what the area office's position was on Bill 120 and was told they didn't have a position. I more recently wrote to Brian Low, who has recently been appointed director in the Ministry of Community and Social Services in a newly formed branch dealing with people who are developmentally handicapped. I outlined the problem to him and asked specifically in writing what the ministry's position was. I've had no response to that letter.

Mr Grandmaître: No response.

One last question and then my friend will take over. Why do you think the Minister of Housing would make such a recommendation under Bill 120 that you would now be served, if I can use the word "served," under the Landlord and Tenant Act? Why was that decision made?

Mr Reynolds: I think the decision was made with every good intention, as I said earlier, to preserve the rights of everyone, including people who are developmentally handicapped. But I think—

Mr Grandmaître: But you said you never had a problem with this before.

Mr Reynolds: No.

Mr Grandmaître: Carry on.

Mr Reynolds: I believe that this way of doing it for this particular population is not appropriate. That's all that we're saying really.

The Chair: Thank you. Mr Daigeler.

Mr Daigeler: I will just pursue this a little bit. Frankly, the question is perhaps less to you than—I guess he disappeared now—the parliamentary assistant or somebody.

Mr Gordon Mills (Durham East): He's right there.

Mr Daigeler: Are you the parliamentary assistant? I thought Winninger was. Oh, I see.

Mr Grandmaître: Everybody is.

The Chair: Nevertheless, the question?

Mr Daigeler: What's Winninger's role?

Mr Mills: Get to the point. We've got the power play here.

Mr Daigeler: Clarify for me: Does Bill 120 apply to the homes that this group is representing?

Mr Gary Wilson: Yes.

Mr Daigeler: The minister earlier referred to, and Dr Lightman as well, where there has been abuse and so on,

in order to prevent these abuses they have to bring in Bill 120. In your experience, have there been a significant number of cases where serious abuse has taken place?

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Mr Reynolds: There have been, but I think the problem lies in that we're talking about different people. We're talking about developmentally handicapped people as though they all have the same degree of handicap.

I'm sure there have been some abuses occur with people who might have been referred to as developmentally handicapped but who are at the sort of upper end of the spectrum and are capable enough that they are living relatively independently on their own, but they still have some problems with daily living, some problems with getting on with people, some problems dealing with landlords and whatever. Those people, who are not the kinds of people we're talking about here, I'm sure there have been abuses there.

I have heard myself and our APSWs, our adult protective service workers, have acted as advocates for some of those people when they have been turfed out of their accommodation. People talk about the green garbage bag syndrome where their belongings are all put in a bag and put out on the street, and yes, there have been some people who have suffered that kind of treatment.

I think the Landlord and Tenant Act should be there to protect them, but we're not talking about that group. We're talking about people with developmental handicaps but those at a different level of functioning, if you like, who are already in a program, where we are prepared to provide the kinds of protections so that doesn't happen.

I think the problem stems from trying to capture a whole range of people under one kind of act, which is appropriate for some but not appropriate for others. That's all we're saying.

The Chair: Thank you for your presentation this afternoon. The committee will be giving consideration to what has been said today during the clause-by-clause examination which commences March 6. Thank you for your presentation.

LEGAL CLINICS HOUSING ISSUES COMMITTEE

The Chair: The next presenter will be the Clinic Resource Office, Paul Rapsey.

Mr Paul Rapsey: Good afternoon.

The Chair: Good afternoon. You've been allocated one half-hour for your presentation this afternoon.

Mr Rapsey: Thank you. I should just clarify one thing. I'm speaking on behalf of the Legal Clinics Housing Issues Committee. I work at the Clinic Resource Office but this submission is not from that office per se.

We represent tenant advocates in more than 70 legal clinics around the province. I want to say that we support the bill but that our support is not unqualified. I want to also add that I'm speaking about not the general bill in all of its complexity but I want to address my points primarily to the implications which the Landlord and Tenant Act has. I've given you a written submission. I'm not going to be reading that submission. I'm going to be talking about highlights.

The Lightman commission admittedly was dealing with a broad spectrum of accommodation, and Mr Lightman noted that you've got luxury accommodation at one end and you've got boarding and lodging houses at the other end. One of the things he asked for was that these homes be monitored.

The existing legislation exempts care homes from the entire application of the Landlord and Tenant Act. The problem is that the way the legislation is worded, the courts have not been able to figure out when something is or is not a care home. So one of the benefits to this bill could be to add a degree of certainty.

Some courts, including the Divisional Court in Ontario, have said that the primary purpose of the accommodation must be to provide care and others have said no, that any nominal degree of care, whether or not it's actually provided, is sufficient to render the premises exempt from the Landlord and Tenant Act. That is the problem, because you end up in court trying to decide preliminary issues as to whether or not the legislation applies.

I'm not sure that the bill resolves that problem. In fact I think what the bill does is to provide a loophole for premises that are now fully covered by the Landlord and Tenant Act to claim that they are care homes. You see, Lightman acknowledged that you've got boarding and lodging homes at one end of the spectrum of care facility and those homes that clearly are now fully covered by the Landlord and Tenant Act, but they now will be able to claim that they are care homes and come in under the limited exemptions of Bill 120. Therefore, a remedial piece of legislation has the potential of removing rights from tenants.

I think this is a problem, and it's a problem that relates to the fact that Lightman's main recommendation of monitoring these homes has not been followed through in this bill. I would recommend, and it's going to come up again and again in some of my problem areas with this bill, that you could simply regulate: This is a class A care home, this is a class B care home, this is a class C care home and so on, and that certain exemptions apply to certain homes and don't apply to others.

One thing the Divisional Court said was that obviously rent includes the provision of meals. This legislation allows the provision of meals to be excluded from rent. It takes away protections from tenants in that regard in all homes. For example, in the traditional board home situation meals are provided, meals are included in rent now. Suddenly they can claim that they're a care home because of the way the definition is worded, which says whether or not the primary purpose is the provision of care. That means even if a minimal degree of the accommodation is care, it's going to be covered and exempted. We think this is overly broad and a real problem.

The other real problem with the legislation is that if you look at appendix C of my paper, I've columnized the act between the Landlord and Tenant Act, the Rent Control Act and the Rental Housing Protection Act. There are real discrepancies. I hope that those discrepancies are oversights, drafting errors or whatever, but when you've got related legislation with different definitions or existing definitions in one act and not in the other, you

provide a real problem for courts and tribunals, tenants and landlords to know exactly how to apply the acts together.

For example, "care services" is defined in two acts and not in a third. Homes for Special Care Act residences are exempted from one act but not from two. The Developmental Services Act special regulations apply to one act, but the whole act applies to the other two acts. Correctional and penal accommodations are exempted from two acts but not from one act. The definition of certain exempted rehabilitative and therapeutic centres in two acts uses the words "building or structure," but in the other act it uses only the term "building."

I can't say I really understand why these distinctions are there. All I can say is that unless there's a real, genuine purpose to those distinctions which has escaped me, you're not doing a service by having those discrepancies exist.

Another problem applies just to the application of the act to the Rent Control Act. Those are the multiple transitional sections that say that if the premise was a care facility on such-and-such a date, and I believe the date is usually correspondent with the first reading date, then such-and-such shall apply or shall not apply, and there are several of them in the act.

1440

The problem is you're assuming it's easy to know whether something was a care home or a care service on that date. The multiple court cases which are going now under the existing legislation should show it's not easy to know whether something is covered by those terms on such-and-such a date.

I think the whole problem could be avoided, and therefore you will be saving our judicial system and our tribunal system a lot of hassles, if you simply deem premises to have been covered on such-and-such a date for such-and-such a purpose. I really do think that this whole problem of assuming it's easy to know what the premises was on such-and-such a date is going to provide a real lot of litigation and litigation problems.

I also am aware that Lightman himself recommended fast-track evictions. We do not support fast-track evictions. We're happy that the bill does not provide for fast-track evictions.

The procedures in the Landlord and Tenant Act are already intended to be summary. I admit that they are not always summary, but they're not summary because of the legislation. The reason they're not summary is because of financing, because of court loads, because of funding, because of person power in the judiciary or the tribunals.

I don't think that problem is going to be solved by fast-track evictions, nor do I think there's any justification for having different classes of tenants. We are not supposed to be encouraging the discriminatory treatment of different classes of people in today's society.

I also think that in many of the critical problems arising from danger to others or to self, particularly raised by the last group, can already be resolved in a summary proceeding through Mental Health Act legislation or Criminal Code legislation in the most extreme cases. But

I'm not sure that in other than those most extreme cases there's any justification for discriminatory treatment of vulnerable people in this province.

I'm also aware that there is a concern by some people on the issue of subletting. Again, this becomes an issue of treating care facilities as a homogenous group. They clearly are not. You cannot allow the act to continue to treat them as a homogenous group.

I think the issue of sublet is already adequately covered in the existing Landlord and Tenant Act. The reason is that the existing act allows landlords to put in written agreements, whether they are occupancy agreements or tenancy agreements, a clause saying that you cannot sublet without the consent of the landlord and that the only proviso on that is that the consent cannot be unreasonably withheld or arbitrarily withheld.

Courts have never had a particular problem with the problem of determining reasonableness of any issue. I think they won't have a problem in those cases. For example, in your class A, if you go by a classification system, which I again say you should, class A premises that are more akin to your nursing home type of situation—of course, it could be a legitimate provision that a tenant cannot sublet to someone who doesn't need that kind of facility or that kind of care. I think a court would have no problem finding that.

The other thing is that traditionally you write in, where there's a waiting list or where there's a particular type of facility provided for a particular type of person, that that is reasonable. You could do that by regulation. You could simply say, by regulation, for class A care facility it's reasonable to absolutely deny the right to sublet; for class B, it's reasonable to deny the right to sublet where there's a bona fide waiting list; for class C, that's just a boarding house. Why should it be any different than any other residential premises where the right to sublet exists?

The opposite side of that coin is that if you're bringing this wide spectrum of care facility into the coverage of the Landlord and Tenant Act, you've got the problem that you're dealing with vulnerable people for the most part: the elderly, the disabled, people who are more prone to death, who are more prone to serious illness, to hospitalization, people who are more prone to sudden decrease in their physical abilities, for example. They can no longer get to their second-floor room. They can no longer use the particular type of bathtub or whatever in the premises.

Those people now, if they had a year's lease, would not be able to leave without the consent of the landlord, would still be liable for up to a year's rent. Too bad. If they die, their estate would still be liable till the end of their tenancy period. They would then have to give the appropriate notice under the Landlord and Tenant Act.

I think if this is truly remedial legislation, you have to acknowledge that you're dealing with a special group of Ontario citizens, the more vulnerable group of Ontario citizens who, at their option, if they die or if they are seriously ill or no longer capable of living in that particular accommodation at their option, I think you need then to have a fast means of termination of the tenancy; instead of your 60-day or your end-of-the-year and then 60-day notice, maybe a 30-day notice, a 28-day notice, as

is in part I of the Landlord and Tenant Act, for example. There are options, and I think that has not been considered and it is a definite problem area for tenants.

I only want to touch on the apartments-in-houses issue briefly. We support it. But the bill seems to assume that these so-called illegal units, illegal because they're not zoned appropriately—that the act of living there by the tenant is an illegal act that permits the landlord to evict. Well, that's an assumption that is not clearly made, because the caselaw on the issue is not at all clear. I would submit that's the illegal act of the landlord. The landlords should not be able to evict for their own illegal act.

Now the reason it's important is the bill will remedy the problem for the second unit in houses and those types of issues. But there are other kinds of so-called illegal units that won't be covered by this act and won't be made legal. By assuming that these premises give the landlord a right—and I think there is an implied assumption that that's a right provided in the bill—you are jeopardizing the existing rights of these people.

The problem is nobody wants to go to the court and say, "My premises are not up to scratch," if they are going to be afraid of being evicted, and you're going to have more fires and more deaths and more tragedies that we have experienced in the last couple of months. But the problem is not one of these premises being illegal; the problem is one that tenants do not feel they can come forward to enforce their rights.

I disagree with people who say that Bill 120 is going to create more problems and more tragedies. I think Bill 120 is, quite the contrary, going to allow tenants to go to court, go to the rent control, to allow them to go to the municipalities without fear of being summarily evicted simply because the premises is not zoned as it should be and to demand that they be brought to a safe standard.

I also think, having been an advocate myself for many years, the problem is not so much that the premises is legal or illegal; the problem is that you have a real problem getting the municipalities to enforce their standards. I know, from many premises I've gone after on standards issues, that you can go, but you're not going to get much help from the municipality in terms of bringing those premises up to standard. You have to go to court and get a judge to order it. I think that's the problem, not the fact that they are zoned or not zoned appropriately. So we support the apartments-in-houses part of the bill categorically.

The only other two things I want to raise are that I simply don't understand section 6 of the bill. I've read it and re-read it, and it just passes me by. For example, one part of it requires something in writing; the other part of it doesn't require something in writing. One part of it exempts you if there's been fraud or misrepresentation; the other part doesn't.

I don't understand it, and if I, who have had some legal training and some experience in the field, don't understand it, tenants and landlords are not going to understand it. If you're saying to them, "We're going to give you a summary procedure to go to court," and a summary procedure is one where you don't need a

lawyer, how are they going to be able to enforce their rights if they don't understand the legislation? I simply do not know what that section means.

1450

The other concern I have is the Municipal Act section, which deals with lodging houses. I'm not sure of the benefit of exempting residential units from there. It's not readily apparent to me why you would exempt it entirely unless you are going to provide for some form of regulation of these homes elsewhere by regulation under the Landlord and Tenant Act or whatever.

I reiterate that the problem is assuming that all care homes are the same; they aren't. There needs to be, by simple regulation under the Landlord and Tenant Act, a classification of these homes so that you know you're not taking away rights from tenants but you are preserving and expanding their rights and that you are making any exemption consistent with the nature of the care facility that is providing the service. That's my summary of my submissions.

Mr Winninger: I certainly think that you've provided some helpful assistance in interpreting the "for-care" versus "residential" definitions.

I'm reminded of a case I was involved in which you might be familiar with, Diversicare, a case in London with the Chelsea Park tenants, where we went to Divisional Court and the court only heard from the landlord and dismissed the landlord's appeal. They were trying to argue that even though these tenants live in an independent apartment building, because they can contract for additional supplementary services or care they were to be excluded from the provisions of the rent review act.

I don't think we have any definitive answer yet as to how the courts interpret the issue of care and the applicability of the rent review act. I understand that there are cases presently under appeal. George Monticone was here earlier today. He is one, I think, that may provide some guidance.

Mr Rapsey: Yes, there are two cases, two cases that have ruled completely opposite, both before the Court of Appeal at the present time.

Mr Winninger: I think it's important that we review your submissions, which are quite technical in nature, and that we give them the appropriate consideration when we get to clause-by-clause. I think my colleague might have a question.

Mr Gary Wilson: I'd just like to affirm what David said about your submission, although I'd like to get a sense, partly because you jumped into your presentation, of where you think the overall effect of the home care provisions in Bill 120 are. Generally, are you satisfied with them as going in the right direction?

Mr Rapsey: I definitely think they're going in the right direction. I know of too many abusive situations, in everything from quite sophisticated care homes to very unsophisticated care homes, to think that you can just assume that there's going to be self-regulation. There isn't going to be self-regulation, or not satisfactory self-regulation. So I'm pleased with the direction, but I'm concerned with the assumption that all care homes are the

same, and I'm also concerned that by the way you've defined "care home" you're going to expand the possibility for homes jumping from the full protection of the Landlord and Tenant Act into the limited exemptions of the new bill.

Mr Grandmaître: Your way of describing Bill 120, it's going to be a legal nightmare, it's going to be a lot of fun for lawyers challenging Bill 120.

Mr Rapsey: I think the fun is going to be if it's not tightened up and there's some way of classifying. Mr Lightman himself did not want the full regulation of nursing homes, and I totally agree with that. But there needs to be some system of classification, which can be done quite easily through regulation under the statute. It doesn't need to be a nightmare.

Mr Grandmaître: So you think the bill is assuming too much and that the regulations should be tightened.

Mr Rapsey: I've seen no regulations yet under it, but I think regulations under the Landlord and Tenant Act for example could be made to classify care homes and to classify types of exemptions. I don't see a problem with that. The regulatory provisions of the Landlord and Tenant Act as it exists now are very broadly worded.

Mr Grandmaître: You made an allusion to the LTA and the Rent Control Act, that one act was overriding the other. Can this be resolved?

Mr Rapsey: I think it can.

Mr Grandmaître: In the regulations?

Mr Rapsey: I think some of the problems are just the discrepancies in the drafting of the parallel legislative sections. I think maybe that was a legislative oversight or a drafting oversight, or if it's not, it needs to be made clear why there is a discrepancy in the wording of the sections.

In terms of classifying, again I think it's just simply a system of monitoring. For example, maybe there should be a requirement that homes that are going to be claiming they are care homes come forward and register, and there'd be some way of saying, "Well, you're just a boarding house," or "You're quite a sophisticated care facility and therefore you would be classified under this system and subject to these exemptions."

Mr Grandmaître: Will you be providing this committee with amendments?

Mr Rapsey: No. Again, I'm just providing you with concerns and with issues that I think need to be addressed. In my appendices, I've shown where some of the discrepancies are. I think that can be something that can be taken away and looked at.

Mr Grandmaître: But don't you think that your concerns—

The Chair: Mr Jordan would like an opportunity.

Mr Jordan: Thank you for your very detailed presentation. I'm interested in your observations or remarks relative to your familiarity with abusive situations. You say that you are aware of those in the different classes of homes. How did you become aware of them?

Mr Rapsey: I was a lawyer practising for tenants.

Mr Jordan: Who brought it to your attention?

Mr Rapsey: The tenants or in some cases it was community workers.

Mr Jordan: Had they gone through the other channels before going to you or going to the representative of the county or the representative of the municipality?

Mr Rapsey: There were no other channels in those circumstances. These were simply landlords who had taken over existing premises who simply wanted more rent or they wanted to downgrade the type of care they provided or there was some other reason that they didn't want these people, who had been allowed to live there under a previous regime, to continue to live there.

Mr Jordan: I guess what I would like to have your comments on is, is it not possible for the municipality in which this home is located to understand the licence that it carries and the regulations that go with it? Then that tenant or resident could go directly to the official of that municipality and bring something to his attention and have it dealt with to save all this legal—why do you think Queen's Park has to deal with this? Why can't we do it with our own regulations at home base?

Mr Rapsey: Because it's not being done.

Mr Jordan: I know. You've pointed out situations where it's not being done, but can we not correct that?

Mr Rapsey: I think to allow it to be done by a municipality, if the municipality actually applies to the actual facility, it's too piecemeal. It needs some direction. There are many of these homes that municipalities simply have no impact on at all. They are complying with zoning requirements. There's no other agreement with the municipality that gives the municipality any right to go in at all.

For example, the old exemption for the Ministry of Community and Social Services Act, homes that were subject to that, the term "subject to" was simply very broadly applied and there was usually just an agreement as to funding; absolutely no agreement as to the types of rights these occupants were to have or the types of care they were to receive, and very seldom were we ever able to get our hands on the actual agreement. It was simply a funding document, and that exempted the home from the legislation—absolutely inadequate.

Mr Jordan: I guess what I was trying to establish—do I have a minute?

The Chair: No, I think the time has expired. Thank you very much for appearing today. I think your comments will be useful as we get to the clause-by-clause on March 6.

1500

MISSISSAUGA FIRE DEPARTMENT

The Chair: The next presentation will be from the chief of the Mississauga fire department, Cyril Hare. Good afternoon. Welcome to the committee. You've been allocated one half-hour for your presentation and the members always appreciate some time to ask questions. Your presence has been predicted this morning by the chief executive of your municipality. You may begin.

Mr Cyril Hare: Mr Chairman and committee mem-

bers, I'm here today to talk to you about the concerns of the fire protection community regarding the fire safety of accessory apartments in houses.

The recent tragedy that occurred in Mississauga that resulted in the death of a mother and her infant son has raised public awareness of the dangers that the tens of thousands of people who live in this form of accommodation face every day. It's my hope that your committee will be moved by these events and the information that will be presented to you not only by myself but by others to take action to have fire safety regulations put in place to reduce or eliminate the possibility of more of these tragedies happening.

I should add that yesterday morning we had another basement apartment fire in which we sent a mother and her preschool child to hospital with smoke inhalation, but I believe both of them will recover. They're probably out of hospital already. So it's not something that's going away.

The fire deaths of January 1, 1994, in Mississauga are now the subject of an inquest. The details of that incident will be reviewed through that inquiry. It's sufficient to say that the basement apartment in which the fire occurred was not approved by any municipal officials and did not have even the most fundamental fire safety precautions.

The firefighters who attended the fire took great personal risk to rescue both occupants from the basement apartment. However, their actions were in vain. By the time they got the people out it was too late. They were transported to hospital and both died in hospital. Although we've received a great deal of publicity, there have been previous fires in other jurisdictions—we've certainly had some of our own—that have resulted in deaths, and the results of this fire were predictable.

In 1993 there were 47 fires in basements of single-family dwellings in Mississauga. In reviewing our statistics we found that 30% of those were basement apartments. The Ministry of Housing has estimated that up 10% of our housing stock could contain basement apartments. It should be obvious that the likelihood of basement fires is greater in a house with a basement apartment; 30% of our fires were basement apartments and 10% of the stock we'd consider basement apartments.

Basements are also some of the most difficult fires for us to fight. When you're fighting a basement fire, the fire is coming up the stairs while you're going down. You have no choice but to take an awful beating going in, and if you're inside the house it's very difficult to get out. Unfortunately, we don't really have statistics for the province but I'm sure most municipalities could give you similar statistics to those that I've just provided.

In 1993, the task group on accessory apartments was convened by the Ministry of the Solicitor General, office of the fire marshal. This task group consisted of representatives from government, industry, property owners and tenants' groups, a cross-section of those interested groups. Its mandate was to develop a set of regulations for accessory apartments that could be included in part 9 of the fire code.

The group reviewed the provisions of the building code and the guidelines that had been developed by the office of the fire marshal to assist local fire departments in setting standards for fire safety in accessory apartments. I had the privilege of representing the Ontario Association of Fire Chiefs on this committee.

By April of last year the group had prepared a draft regulation for inclusion in part 9 of the fire code. I've included for you in your information booklet a copy of the most recent draft, which is actually dated this month. At this time I did not know the status of the document, other than that current draft, other than to note that Bill 120 doesn't address it, doesn't mention it at all, nor does it mention any improvements to the Fire Marshals Act.

The draft regulation addresses a number of fire safety concerns. It provides for the installation of fire safety devices and construction that will provide early warning for building occupants, reduce the rate of spread of a fire, and provide means of escape in an emergency.

The first requirement of the regulation that should be present in all buildings where persons sleep is the installation of smoke alarms. These devices detect the presence of smoke and sound an alarm before the concentration reaches lethal levels. If the person in the dwelling is ambulatory, he or she has a good possibility of escape.

Unfortunately, most people don't realize how quickly a fire spreads. From the time of open flame till the time of flashover can be as little as three minutes. Flashover is the point when all of the material in the room—the furnishings, the walls, the ceiling, everything—ignites in one large fireball. If you're in there, you will not survive, and if you're in an adjacent area, you're in immediate grave danger.

An occupant must act quickly when the smoke alarm activates. You only have a few minutes to escape. By the time the fire department responds, if you're in the room of origin, you're quite likely dead, and if you're in another area, you are in grave danger and probably will be severely injured by the time we rescue you. Information on smoke alarms is also included in the information package.

The regulation calls for fire separations between dwellings and also between the dwellings and fuel-fired heating appliances. A fire separation is a physical barrier to prevent the spread of fire and smoke, and it's designed to last for a specific period of time. It usually consists of a non-combustible cover, something like drywall, over the combustible elements in the building. The separations act to slow the spread of fire and allow the occupants time to escape from adjacent areas of the building or through their exits.

In most accessory apartments, these types of barriers are non-existent. The walls and ceilings are often highly combustible lightweight panelling and combustible ceiling tiles. It has certainly been our experience that the least expensive building materials you might find will be found in basement apartments.

Proper exits are also an important requirement of the proposed regulation. The standard calls for a separate exit from each dwelling unit. Where exits must pass through

other parts of the building, through areas that may be occupied by other tenants or other occupants, you must have another exit. You may be able to do that through windows.

Where the windows are over 900 millimetres, or three feet, above the floor, you're required to provide stairs so that the persons can get out, and of course the window must be large enough for persons to escape. I have a concern, which I have certainly raised before, about the use of windows as exits. They're fine for those of us who are physically able, but what about those who aren't?

Where property owners now, for one reason or another, are not able to comply with the fire separation requirements or the exiting requirements, they can compensate for these deficiencies by providing fire sprinkler protection throughout the building.

The draft regulations will provide an increased level of safety for ambulatory residents, but they don't address the needs of the elderly, children, the handicapped or the impaired. Unfortunately, many of the occupants of accessory apartments are in these high-risk groups. The most efficient means of protecting occupants in these categories is to provide fixed fire control systems such as residential sprinkler systems. A residential sprinkler system will control or extinguish a fire before it reaches a size that will endanger the occupants in the involved dwelling or other portions of the building.

The Ontario Association of Fire Chiefs endorsed this concept of installing residential sprinkler protection in all new premises at its 1993 conference. Unfortunately, the proposal has not received a great deal of support from the Ministry of Housing or from building industry lobby groups.

It's my opinion, one which is shared by most of the fire protection community, that the installation of residential sprinkler protection is the most efficient method of addressing the fire safety problem not only in accessory apartments but in all residential premises ranging from single-family dwellings to high-rise apartment buildings. We've also included information in your package on residential sprinkler protection.

The electrical installation in most basement apartments is a concern as well to the fire service. Many of the basement apartments are constructed by the owners. The quality of the work is dependent on their skill as a tradesperson. It has been our experience that the electrical services are never upgraded to compensate for the increased electrical load, circuits are often overloaded, and the wiring is not in compliance with the Hydro code. Permits are never taken out for this work and, therefore, Hydro never inspects them. The only time inspections are carried out is when we discover it, and that's normally after we've had the fire. After we have the fire we bring in Hydro and they issue orders to get the electrical systems corrected.

1510

There has been some controversy over which agency should enforce these regulations for fire safety. I don't think there's any question that the fire service is the best qualified to carry out this function as we currently

enforce the regulations in other buildings, in other structures, in other areas, and it would be obvious that it should remain with us and that these standards should be added to the fire code. The fire code already has the general enforcement mechanisms in place.

Another issue that goes hand in hand with the fire safety regulations is the right of entry. Bill 120 proposes to have the enforcement agency obtain a search warrant before compelling a property owner to allow entry. Although the bill proposes to make obtaining a search warrant easier, it's not sufficient. When obtaining a search warrant the informant must have "reasonable and probable grounds to believe an offence has taken place." Unless you've been in the building you have no grounds to claim there's an offence.

It has been our experience that a justice of the peace will not grant a search warrant without substantial evidence. In 1993 we in fact attempted to obtain a warrant to do an inspection on a residential premises. We had an affidavit from a private individual who had raised concerns, who had been in the property and identified concerns, and the justice of the peace did not give us authority to enter the property to do the inspection.

The fire department can charge the owner under the Fire Marshals Act, but the time and the expense required to take him to court is just an added load on a municipality. We can charge them under section 18 of the act for obstructing us in the performance of our duty, but if we do take them to court and we fine them, it's a great deal of work for myself, for my staff, and then all of the funds flow to the province and we do all the work. The province reaps all the benefit as far as fines go, and I don't think fines are a benefit to start with.

It also leads to delays. Delays in carrying out the fire inspections will extend the time that accessory apartment occupants must live in substandard and unsafe conditions. Bill 120 must contain some provisions to require the owner to allow entry for the purpose of conducting a fire safety inspection. Failure to allow entry must result in a minimum fine that will deter a property owner from refusing access for the purpose of inspection. If it's more expensive for him to refuse us entry than to let us in, he's going to let us in. These powers should be included in the Fire Marshals Act.

The workload that municipalities will have to shoulder to properly inspect accessory apartments will be enormous. In Mississauga, by the Ministry of Housing staff's own estimates, there are approximately 10,000 unregistered accessory apartments. Conservatively estimating the person-days required to inspect, review plans, reinspect and occasionally prosecute offenders at two days per person, and the more difficult it is to carry out the inspection the more likely it is we'll have to spend more time at it, it's going to give my municipality approximately 20,000 person-days of work, which is roughly 87 person-years. I don't have 87 staff to get it done in one year. This estimate does not take into account social contract implications and the impact that has on my ability to provide service.

There is no municipality that has enough fire prevention or bylaw enforcement staff to complete the inspection.

tions within a reasonable amount of time. Much of this work will have to be done by on-duty firefighters through service inspection programs. It's imperative that the process be made as simple as possible to ensure that existing accessory apartment stock is brought up to an acceptable level of safety as quickly as possible. The more time-consuming the process, the longer it will take. What we need to do is streamline the bureaucracy, not lengthen the process by placing unnecessary hurdles before municipalities.

In addition to the need for improved powers of entry, property owners must be required to register their accessory apartments with the local municipality. If I don't know it's there, how am I going to deal with it? The municipality will have the responsibility for inspecting the premises. The current bill requires registration for the purposes of rent control, but does not contain any requirements for registration with municipalities for the purposes of safety.

The property owner will no longer have any fear, since this bill will make it his or her right to have the basement apartment, so zoning will not be an issue. It has been said the tenants will report their accessory apartments once they have no fear of reprisal from the landlord. It's been our experience that accessory apartments are most often occupied by immigrants and the disadvantaged, and these people are the ones who are least likely to know their rights and are often afraid of government authorities. The majority of our complaints come from disgruntled neighbours, not tenants. It's rare and I can't even think of one right now where we've had a tenant complaint. They usually come from the neighbourhood.

Municipalities must know where these apartments exist in order to ensure that they are safe and also to plan services for those areas that have large numbers of these types of accommodation. Our municipal services were predicated on the understanding that many of our planning areas were planned based on buildings being occupied as single-family dwellings. Since the services provided by fire and emergency services, as well as other local government services, are influenced by population, it is appropriate that these properties also pay their fair share of taxes for these additional unplanned service demands.

In addition to the need for adequate safety regulations, the province and the fire protection community must do something about public awareness regarding dangers of fire. There are a number of programs that are available. However, the funding and staff are not available at either the provincial or municipal level. An ounce of prevention is worth a pound of cure. We need to increase the public's knowledge of fire safety.

Although Canada has one of the highest standards of living in the world, we also have the unenviable record of having one of the highest rates of death by fire. Every fire prevented by education is one that my staff does not have to fight. I might add that I never know about the ones we prevented because we never hear about them. We only hear about the ones we didn't.

I've included six recommendations for the committee's review.

(1) The fire code should be amended immediately to include the draft fire safety regulations for accessory apartments.

(2) Bill 120 should include provisions to allow municipal fire safety officials the right of entry without the need of a search warrant to ensure compliance with minimum safety standards.

(3) Bill 120 should contain provisions to require owners of accessory apartments to register their properties with the municipality in which the properties are located.

(4) The Fire Marshals Act should be amended to have the fines collected for prosecutions under the fire code paid to the local municipality, as is currently the practice of the building code.

(5) The building code should be amended to require the installation of residential sprinkler protection in all residential premises constructed or renovated under the building code.

(6) The Ministry of the Solicitor General, office of the fire marshal, should be granted funding to deliver a coordinated fire safety education program to all residents of Ontario.

Are there any questions?

Mr Cordiano: Thank you very much for that presentation. I think it goes a long way towards answering some of the questions that have been posed around Bill 120 with respect to safety and the concern that I think all of us share with regard to the fact that, although basement apartments may be legal after Bill 120, are they safe? Will all of these units in fact be safe?

Obviously, safe places for people to live in are what we're after. We're not, I think, going to trade that off for additional units to house people. Your views are that in fact Bill 120 will not go all the way towards ensuring that we have safe places for people to live in, as in the form of accessory apartments.

Mr Hare: My concern is that Bill 120 should be quite specific in bringing these regulations forward. It says there will be some regulations, but it doesn't say when or how. I think those things need to be brought forward as quickly as possible.

1520

Mr Cordiano: We haven't heard any indications around those specifics from the minister; perhaps we will. But again, the question is, will there be enough—and the other question of course ultimately is, will the standards that will be set be met? If you can't inspect these facilities and enforce those standards, then we're back to square one.

Mr Hare: True. Whatever the regulations are, we're going to make every attempt that we can to get out there and get to those places and get them inspected and see that they are upgraded. Right now we haven't found any buildings that come anywhere near the standards that are spelled out in this proposed regulation.

Mr Cordiano: By your estimation, there's quite a considerable amount of work to be done to make those places safe or up to standard?

Mr Hare: Yes, there is. Mississauga I don't believe

is unique. If we have the problem, I'm sure it's shared by everyone else across the province.

Mr Grandmaitre: How much assessment would you—I guess it will have to take a while, but how much municipal assessment is Mississauga losing because of these 10,000 units, basement apartments, that are not being reported as living quarters?

Mr Hare: Assessment? I'm not sure exactly how much the value would be, to be honest with you. I couldn't give you an estimate.

The Chair: Mr Johnson can find out.

Mr David Johnson: Mr Johnson would like to ask, after congratulating the chief on a fine report under most trying circumstances, I'm sure, and on your concern for safety, as I'm sure it's all of our concern for safety, but it certainly comes through in this report: In your estimation, if Bill 120 was implemented in the fashion that has been recommended today, without the further right-of-entry powers that you're seeking, what would be the consequence in terms of safety?

Mr Hare: I think we'd end up with the status quo. We know right now that it's not adequate.

Mr David Johnson: Your mayor was here this morning and it was her fear, from the other side of the equation, that if it was implemented the way it is today, it would encourage more basement apartments. That may not be in your jurisdiction to comment on, but if she's right and more basement apartments came in and you, as the fire chief, did not have the right of entry to inspect and make sure that the safety standards were up to scratch, then what would happen?

Mr Hare: I'll have more fires and more deaths.

Mr David Johnson: That's what municipalities have been saying for years to various ministries. So I think really the focal point of this whole thing is that if municipalities do not have stronger rights of entry to get in and inspect, then there's going to be a problem.

Mr Hare: That's correct. I only I have so many—I shouldn't say myself because I won't be doing the inspections per se. I have a staff to do that. But for my staff, every day that you add into the process of trying to get an inspection done is one less inspection that will be done, the longer the process is drawn out. We need to be able to do this fairly quickly and efficiently.

We will be using and I'm sure many municipalities will be using their on-duty line firefighting staff wherever possible to try and do some of these inspections. If we do that, those people—I can't tie those people up in court because somebody said: "No, you can't come in. Go and get yourself a warrant." I can't do that. Those people have a responsibility to provide protection to the public. As part of their on-duty activities, they will do inspections when they're not committed to an emergency.

Mr David Johnson: Chief, I get the sense in recommendation 2 that you're recommending that the fire department should have abilities to search for beyond the kind of things that they would look for today. Earlier in your presentation you mentioned the wiring hazards, for example, the wiring hookups that perhaps wouldn't comply, and also property standards and building stan-

dards, that sort of thing. Is it your contention that the fire department not only should have the entry but should have a wider scope of problems to look for?

Mr Hare: No. If there are problems now electrically, when we identify them, we have the right, for example, to bring in a Hydro inspector under the current legislation, under the Fire Departments Act. So we can take action once we gain entry.

Mr David Johnson: So you could identify that and bring in a—

Mr Hare: Yes.

Mr David Johnson: Can you bring in a building inspector?

Mr Hare: Yes, we can. Under the act we can bring a constable, police officer or any person we deem necessary for the purposes of carrying out our inspection.

Mr David Johnson: So it would be your contention then, provided that Bill 120 gave the fire department the right of entry, your staff not only would be able to determine typical fire hazards but they would be able to be suspicious about wiring hazards and other property standards violations and then you could bring in those staff—

Mr Hare: If necessary.

Mr David Johnson: —if necessary to identify all the problems, all the safety hazards, and hopefully make the unit safe then. But you can't do that unless you have that right of entry.

Mr Hare: Right now, what the bill proposes is that we should do it by search warrant.

Mr David Johnson: Well, that's—

Mr Hare: I'm saying that's going to put in—if you've ever gone to get a search warrant—

Mr David Johnson: I know the problem.

Mr Hare: It just adds a delay into the system.

Mr David Johnson: Delay, and as you've indicated, quite likely you will be denied unless you have some ironclad case that there is a violation there. You can't get that ironclad case unless you're in and see it. It's catch-22.

Mr Hare: The evidence is inside the house.

Mr David Johnson: That's right.

The Chair: I have Mr Fletcher, Mr Mammoliti, Mr Mills and Mr Wilson believing they're going to be in on these four minutes. Mr Fletcher.

Mr Derek Fletcher (Guelph): I'll try to be as short as possible. Thank you for your presentation.

As far as Bill 120 is concerned, right now it's moving in a direction that is trying to require safer accommodation. The recommendations on the back of the page, if these recommendations were included in Bill 120, your department would have no problem with the implementation of Bill 120?

Mr Hare: I'm not here to speak about the issue of where people should have basement apartments, just that if you have them—

Mr Fletcher: Not just basement apartment, as far as Bill 120 is concerned.

Mr Hare: —wherever you say you're going to have them, I want to make sure they're safe.

Mr Fletcher: Yes, and if we included the six recommendations on the back of the page, Bill 120 would be palatable to you.

Mr Hare: Yes.

Mr Fletcher: Especially number 5.

Mr Hare: Yes. It would certainly cut down on my loss statistics.

Mr Fletcher: On a personal level, my brother died in a basement fire in Mississauga about 10 years ago. I think a simple smoke detector would have been sufficient. I think he would have had more of an opportunity to get out of the residence at the time, had that smoke detector been there. I know how long we had to wait before smoke detectors were made law, were in the building code. We waited a long time for that.

I think your recommendations are very good recommendations. Maybe not all of them will be implemented, but I think some of them should be. I agree with you. I think that safety is paramount and I just want to thank you for your presentation.

Mr Mammoliti: Thank you very much, chief, for coming out. It's been my experience that when home owners decide to rent out a portion of their home, it's because they need the income.

Mr Hare: In some cases.

Mr Mammoliti: In most cases. Yesterday we heard that there are over 40,000 basement apartments or apartments within homes in Metro. I'm assuming that most of the home owners can't afford to keep the home unless there's that second income. In your recommendations—5, to be specific—you talk about implementing fire sprinklers in homes.

Mr Hare: Yes.

Mr Mammoliti: How much would that cost a home owner?

Mr Hare: In a new home it would cost between \$1 and \$1.50 a square foot. In an existing home, depending on the water supply, it's going to cost a bit more because you're going to have to run the pipes inside the walls, so you've got to open and close the walls.

Mr Mammoliti: So what could it cost an average home owner, roughly?

Mr Hare: Probably it could cost you \$2 or \$3 a square foot depending upon the situation in the house.

Mr Mammoliti: The total figure in an average home would be how much?

Mr Hare: How big is your house, 1,000 square feet, 2,000 square feet? It could be \$3,000 to \$5,000.

Mr Mammoliti: That would be pretty expensive for a home owner to do in order to survive, wouldn't it?

Mr Hare: I guess I have to ask you how much the life of the person who lives downstairs is worth.

Mr Mammoliti: Don't get me wrong. I tend to agree with you on this. I think we're caught in a dilemma in a sense, and that is, how do you protect what I call essential housing, how do you protect the people who live in

the essential housing and how do you pay for these types of renovations and of course the safety protections that you're talking about?

Mr Hare: Right now I guess quite simply there is no safety in any of them. The proposed regulations, for those people who are ambulatory, will give them warning and give them time to escape. The greater problem that I see is what do you do for children who can't climb a ladder to get out of a window, who aren't old enough to know what they should do when the alarm goes off? What do you do for the elderly? What do you do for those people who are handicapped and who can't quickly escape? Those are other problems that we've got in many of these types of accommodation.

I guess one of the things we're finding is that people are using this as an income-producing activity and not just to own their home. In many cases we're finding absentee landlords where they've taken a house and what they've done is they've divided it and rented upstairs and rented downstairs and it's an income-producing property for them. It's got nothing to do with trying to pay for their own home.

Mr Mammoliti: Is that worse for the fire department, that type of scenario?

The Chair: Thank you, Mr Mammoliti. Thank you to Mr Mills and Mr Wilson for being so understanding. Thank you, chief, for appearing before us today.

1530

ADVOCACY RESOURCE CENTRE FOR THE HANDICAPPED

The Chair: The next presentation will be from the Advocacy Resource Centre for the Handicapped, David Baker. Mr Baker, good afternoon.

Mr David Baker: Good afternoon.

The Chair: You've been allocated one half-hour for a presentation to the committee. We're happy you're here today. You may introduce yourself and your position within the organization and begin.

Mr Baker: Thank you very much. I'd like to begin by thanking the committee for its indulgence in allowing us to shift from the morning to the afternoon. Unfortunately, the shift has not permitted Mr McInnes, who is a quadriplegic and unable to get out today because of the weather, to be here. He is our vice-president. Also, Patti Bregman is trapped down in the States at a funeral for her grandfather and was unable to get back in time. I regret that the shift was not sufficient to allow them to appear. They would have liked to have been here.

Maybe I could just say a few words about ARCH for the benefit of members who may not be aware. ARCH is a legal centre serving the disabled community. We have representation from 49 member organizations representing persons with disabilities, a whole range of disabilities. This area, obviously, has been brought to our attention in our capacity as a legal centre serving our community.

The focus of my remarks will be confined to the sections dealing with the care, although I listened to the chief's comments in relation to the ability of certain groups within society to register complaints about, among other things, fire and safety standards with their land-

lords. I would suggest to you that the changes that are proposed in relation to care have some relevance to the ability of disabled people to raise concerns, including concerns about the enforcement of the other sections of this bill, to the attention of their landlord.

By way of background to our involvement, we have as one of our functions what we call an intake or information service, and we receive between 8,000 and 12,000 calls per year. Many of those are from lawyers serving disabled people, but by far the vast majority are from persons with disabilities. Virtually from the time when we opened in 1980, this issue was brought to our attention.

As we say in the brief, there was a honeymoon period for people who had lived in institutions and who had the opportunity to move out into various forms of housing in the community, but the honeymoon period quickly came to an end when they attempted to raise with their landlords, be they private sector and boarding homes or, on more occasions than we had certainly contemplated, with non-profit and charitable landlords as well—difficulties were arising where people were raising with their landlords concerns about issues of quality of service, basic issues that any tenant might have with a landlord, but also issues that related to the quality of care.

Basically, what they were experiencing was a situation where there was a shortage of this type of housing and people were told that if they didn't like it, they could leave. People who raised these concerns were being evicted, and for many of them this meant a trip back to the institution.

I received a call from Renfrew actually just a week or two ago from an adult protective service worker who was working with someone who had raised concerns. Actually, there were two tenants who had raised concerns about a private boarding home situation. They were being evicted and they were being sent back to Kingston Psychiatric Hospital. I don't know if that would have been brought to Mr Conway's attention, but it was a difficult situation because there was very little recourse for those tenants in that situation, and that is not atypical.

You will have heard, I believe, of circumstances that have arisen where conditions in some of the private boarding homes have been so bad that there have been deaths directly attributable to those conditions. The Cedar Glen inquest, which in many respects gave rise to the Lightman report, had been and was being discussed with the previous government prior to the election. There were discussions ongoing about that inquest which was in process at that time. These issues had been brought to the attention of the former government and there were moves in this direction, I believe it's fair to say, before the election took place.

Mr Jordan mentioned with one of the previous witnesses concerns about why there is no alternative to this process, and if I could just respond to that, as our brief indicates, we had attempted many methods to deal with this. Local government really has not been one that was open. It was fully explored, I can assure you, as one of the options.

In circumstances where there was provincial government funding going into the home, we had for a period

of time some success in going to the Ministry of Community and Social Services, if that was the funder, and they would conduct their own independent investigation and they would either threaten or in fact perform what's called a program review, which is quite an extensive examination of the programs and services provided by the particular care-providing accommodation.

For a period of time that appeared to be working, but over the last five or six years that was no longer an option. A gentleman named Les Horne, who may be known to some of you, was personally responsible for that but also the ministry was concerned about the expense involved in program reviews and that degree of intervention in these individual situations which can arise. That was one option we explored.

Another option that we examined was—again this exclusive to the non-profit sector; the for-profit showed no interest in this—we brought together meetings of the various service providers, particularly what are called supportive service living unit providers, and encouraged them to voluntarily put themselves under part IV of the Landlord and Tenant Act.

Some of them agreed and have abided by that. Unfortunately, it's the landlords who didn't agree where there have been circumstances where problems have arisen. Ultimately, we came to the conclusion that protection under the Landlord and Tenant Act, and coincidentally rent review legislation, was the only alternative, and we did fully explore these other alternatives.

As I say, we continue to have inquests. I believe there is one down in the Chatham area starting up soon in a private boarding home situation, which others may speak to you about, where the circumstances in this housing has really fallen below any standard which should be permitted. People really are prevented from complaining or enforcing the other rights, whether public health or fire and safety and so on, which they have, because they are told if they complain they'll be evicted and there is really no recourse presently available to those people.

As I mentioned to you, there was discussion between ARCH and the previous government which was moving in positive directions. We were pleased that Professor Lightman was appointed to review this issue because we wanted someone with an economics background to look at it. We were concerned that if people were given rights that this kind of housing might dry up for people, which would be providing people with no solution whatsoever. You have your rights but you don't have the housing. We were satisfied through the process followed by Dr Lightman that this issue was satisfactorily addressed, and when Dr Lightman's report appeared to find its way on to the shelf and started to collect dust, there were concerns about this.

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Also, there were continuing situations where people were being evicted under the existing legislation. As is mentioned in the brief, the issue of the application of the Charter of Rights and Freedoms to these situations became a real question. Why is it that housing which is provided almost exclusively to disabled people and seniors was excluded from protection under the Landlord

and Tenant Act and the rent review legislation? As a consequence, charter challenges were initiated, one in Peterborough where a client of ours, PUSH Ontario, was granted intervenor status, and one down in Windsor, where two individual clients of ours brought forward the charter challenge.

In the Windsor case, the judge reviewed on a preliminary basis the charter argument, found that it was of substantial merit and granted injunctions to protect the rights of the individuals concerned. The case is currently scheduled to be argued in April. Yesterday counsel for the government, for the landlord and for ourselves agreed that it should be adjourned until October, because the perception is that the government is dealing in a good-faith way with this issue, and therefore the issue of the charter has been deferred to permit an opportunity to fully review the legislation.

In essence, the legislation, on the issue of care, represents the issues being raised in that litigation. It's extraordinary, but I'm basically here on behalf of the ARCH board of directors to support the legislation and say that it represents a substantial move forward. It will, in our estimation, not jeopardize either the quality of the service provision or the availability of this type of accommodation for disabled people, and it will substantially improve the ability of people in these situations to raise legitimate concerns.

In those circumstances where the tenant deserves to be evicted, there is the same provision that is currently available for evicting tenants, which has proven satisfactory, or if it doesn't, we believe it should be altered for all tenants and not specifically targeted at disabled people and senior citizens. Those are my submissions. Thank you, Mr Chair.

Mr Jordan: Thank you very much for your excellent presentation. I was interested in your reference to an area in my riding of Lanark-Renfrew, where there was a case and two residents had to be returned to Kingston.

Mr Baker: That was the threat that the landlord had issued, and this was a home for special care. Someone came up from Kingston Psychiatric Hospital who was responsible for the home for special care situation. I had to inform the person that at this point in time it was a matter for negotiation between the tenants and the landlord; it was not a question of the individuals having any rights in that situation.

But the last I heard—and as I say, you may have heard more because I was referring them to their member—was that the people were coming up from Kingston to visit the home and to try to ask the landlord not to evict these people, because the consequence would have been that they would have been returned to Kingston Psychiatric Hospital.

Mr Jordan: But were the grounds of eviction relative to the fact that he couldn't provide the service that they now require?

Mr Baker: That wasn't what I was told, but I was getting my information from the adult protective service worker and I don't pretend to have all the information. The point I would make would be that this legislation

doesn't deal with the issue of service provision. There's no obligation on landlords to provide services if it doesn't fit with the program they're delivering, but it does give people the rights. This is essentially a private boarding home situation, with services an ancillary issue.

Mr Jordan: We have, as you are aware, the Rideau Regional Centre in our riding. At one time that institution—at that time it was called an institution; now they don't use that term. It's a residence for handicapped people—at one time we had approximately 3,000 residents; now we have 735 residents.

In talking with the staff and the people in charge there, the pressure from government to have them released to the community is such that I'm concerned that is the objective whether the proper accommodation is in the community or not.

Who is assessing the place these people go to when they leave the official residence that they had been occupying for a number of years?

Mr Baker: I think that in the area of developmental handicap which is relevant to Rideau Regional Centre, there's no one officially mandated with that responsibility. In practice, it would be likely that an adult protective service worker would take that individual on to their case load, particularly if they were going into a private housing situation.

You'd have a situation where the adult protective service worker—and I would say with the advent of the advocacy legislation it's more likely that there would be someone there with that person—would be supported in assessing concerns about the adequacy of the housing.

Mr Jordan: Rather than the operation of it?

Mr Baker: The adequacy of the operation? I'm not sure what the distinction is you're making. The point I am making is that there is support for individuals. It's kind of patchwork now—we hope that it would be somewhat improved—support for individuals in moving out should they chose to move out and should that be a real option for them.

The problem is that if the landlord is saying, "Well, I've got these people and basically if this one's gone tomorrow I can fill that bed with someone else," that affects the quality of both the housing and, in all likelihood, the quality of the care they're receiving.

What this legislation would mean is that, at least in relation to the housing, people would have the same security of tenure as other people and they would therefore be in a better position to raise concerns about the fire standards being violated or the agreement with the ministry in relation to funding for services and so on, not being complied with.

Mr Jordan: Something we're missing here is not the landlord or his accommodation that he's offering to the resident so much as the human element of the resident as he or she enters into the civic life of that community.

I can tell you from firsthand experience with some of the residents that there are people in the community who are perhaps unemployed, but they become friends with them at a bar or somewhere and they're not ready for this type of social life. They know exactly the day they're

receiving their money, their payments. They're having, in my opinion, a much more difficult time fitting into the social life that's being all of a sudden given to them, that they had controlled before. Now it's all there.

Mr Baker: If you're asking me whether I favour maintaining services like the Rideau Regional Centre, I guess I'd have to say that going back through three governments, Conservative, Liberal and NDP, it has been the policy of the government to deinstitutionalize people.

Mr Jordan: But no one has said at what level.

Mr Baker: I just finished my thought there. I represent individuals. I don't enforce government policy. I have helped people, assisted people who wished to leave the Rideau Regional Centre and I have assisted people get back into the Rideau Regional Centre who found that the community services or alternatives that had been made available to them were not adequate to meet their needs.

My position is not to take a position on deinstitutionalization. My responsibility is to serve the interests of my client, which I do. As I've mentioned, in at least one case I assisted someone, over considerable opposition, to get back in.

The Acting Chair (Mr Grandmaître): Thank you, Mr Jordan. Mr Wilson, please.

Mr Gary Wilson: Thank you very much for your presentation. I'd like to turn to your opinion perhaps on something that an earlier group, the Metro Toronto Association for Community Living, was suggesting. While I guess you could say they're generally supportive of the thrust of the legislation, they are very concerned that it is not as flexible as it might be with regard to Landlord and Tenant Act provisions, mainly for people who are developmentally disabled. They think there's a continuum, at one end at least. I guess the level of discretion is so low that the Landlord and Tenant Act doesn't apply or isn't helpful.

I was wondering what your view is especially in cases where a resident in a home care institution might be a threat either to himself or another resident.

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Mr Baker: There are basically two issues I think you're raising. One is that a person is not, because of his disability, capable of making decisions about his housing. The other issue I think is one where the tenant is disruptive and somehow that's causally connected to the person's disability. Have I got two issues? Okay.

In relation to the capacity issue, I think to the extent that this concern ever was valid, it's no longer valid in light of the passage of the advocacy legislation and the passage of the substitute decisions legislation. Either you have a person who is capable of making these decisions and exercising his rights or you have a substitute, whereas, as we've seen, we have many people out there now who are in fact not capable and who have no one there to act on their behalf. In relation to that issue, I would say I'm not terribly sympathetic to it from the beginning, but it has been addressed as well as it has been addressed in any jurisdiction of which I'm aware here in Ontario. That process of implementation is now ongoing.

In relation to the issue of disruption, I must say, in the area of developmental handicap, my experience suggests that's not a major issue. I think you may hear from the Canadian Mental Health Association on this point in relation to mental health concerns and, if I understand it, a suggestion that there be a fast-track eviction process introduced.

I guess my personal view—and this is not my organization's view, because the Association for Community Living and the Canadian Mental Health Association are member organizations of ours, as are a number of organizations that feel very, very strongly there should be no fast-track eviction. We don't have an organizational position on it, but I suggest that consideration be given to the sufficiency of the Substitute Decisions Act and Mental Health Act provisions as well as the Criminal Code provisions.

If people are breaking the law and are threatening other people, for example, there are definitely mechanisms for dealing with that under the law, and these are the same provisions that would apply in any other landlord and tenant situation where a tenant is disrupting circumstances for others. So I think that needs to be looked at.

Another point I would make in relation to that is that in circumstances where people are living in a genuine shared accommodation situation—boarding homes are like that and they're covered under the Landlord and Tenant Act and I think they should be—but where it's a genuinely cooperative living arrangement, and sometimes those arrangements are set up for disabled people—it is possible to structure things under the Co-operative Corporations Act, I believe; correct me if I'm wrong—so that there are provisions where essentially the tenants themselves can make decisions about who they choose to live with. It's a different structure but it's open to people to go that route if that's the kind of structure they're looking for.

Mr Gary Wilson: What about where there's onsite, 24-hour care? Do you see the Landlord and Tenant Act having an effect there, or would it be out of place to have Landlord and Tenant Act provisions in effect?

Mr Baker: I guess the question for me is, why would it not have effect? That's where the charter issue arises for me and for disabled people who are our clients and the people who've complained all these years about this provision. Why is there this exemption? Why is it assumed that tenants don't need the same protection simply because they're required to be provided with care? I think it needs to be considered, but considered on the basis of why people should be treated differently.

I'm pleased that Professor Lightman, certainly our examination of this and apparently the government's examination of this suggest that there isn't a good reason for treating disabled people and seniors differently than other tenants. If there are specific issues, I'd be happy to try to address them, but I don't think simply because people receive care, therefore they should not have the same protections under the Landlord and Tenant Act or they should be exposed to rent increases that are far in excess of those that anybody else is exposed to.

Mr Gary Wilson: What about—

The Acting Chair: Thank you, Mr Wilson. Mr Cordiano.

Mr Cordiano: I think Mr Daigeler has a question.

Mr Daigeler: Thank you very much for your presentation. In your comments you referred to the fact that the tenants, and in this case the disabled tenants, are not always right, but in many cases they had or have justifiable complaints. In this type of situation, injustice and abuse can exist unchecked. Could you enlighten me a little bit about what might be some of these cases of injustice and abuse, and how widespread this is? Just give me some concrete examples of what you're referring to here.

Mr Baker: Sure. I understand you're travelling down to Windsor. I understand the tenants' committee at ALPHA House, which is referred to in our brief, will be addressing you, so I'll leave that to them. I'd also prefer not to comment on it because it's before the courts. But the cases that we've heard about are situations where people have gone to the service providers and said, "You're not fulfilling your contract with the government," or, "You're not doing what you promised you would do," and the landlord has said, "Well, if you don't like it, we're going to evict you." That's a concern.

The situation in Peterborough was where a landlord was free to evict the disabled tenants and bring in other tenants at a higher rent for purely economic reasons, and because some care was provided in that situation, those people could be evicted from their homes, whereas people in the apartment building next door couldn't be evicted for those kinds of reasons from their homes. In that case again there were people who were looking at returning to Kingston Psychiatric Hospital or to other far more expensive service delivery structures and they didn't require it. They were living in a perfectly satisfactory way in this home, but there just weren't alternative places available for them.

We've heard of situations where people were complaining about the food, were helping organize tenants' groups. The situation in the Cedar Glen home I think is a good one, because that was the longest inquest at the time in Canadian history, examining what was going on in that home and the problems there were in having the physical abuse that people were experiencing dealt with.

People were dismissed because they were formerly psychiatric patients, and no one listened. People didn't have any rights in relation to their landlord which they could enforce. So no one would come in and assist them in that situation, not even the people from Queen Street who had referred them there. So there was no mechanism there.

Again, for me it comes down—and I can go on because we've literally had hundreds of complaints over the years.

The Acting Chair: Mr Cordiano would like to ask you a very short question.

Mr Baker: Oh, I'm sorry.

Mr Cordiano: Not to cut you off, but I just wanted to zero in on a point with respect to care and provision of

care and if there's any concern about the lack of provision in the bill in emergency situations. Under the Landlord and Tenant Act, you need 24 hours' notice in order to enter the tenant's premises. I know there are going to be instances where emergency care needs to be provided without that notice being granted, and that's going to create some difficulties. Are you at all concerned with the lack of provision for that in Bill 120?

Mr Baker: I think that can be dealt with and is being dealt with now by those service providers who are operating under part IV voluntarily by contractual arrangements in advance; that is, that people say, "We want you to come in because we require assistance." Before a landlord will undertake to provide service, that would be part of the service agreement, "Part of the service you will provide us is that you'll come in and assist us."

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Mr Cordiano: But in an emergency situation where there need to be provisions—

Mr Baker: In many of these places, the seniors have buzzers and so on. That's part of the service.

Mr Cordiano: But under the Landlord and Tenant Act, it still requires written notice 24 hours in advance in order to enter those premises.

Mr Baker: Not if you're invited. You're an invitee. You're invited to come in in circumstances where service is required. That's not prohibited under the Landlord and Tenant Act, I don't think.

The Chair: Thank you for appearing this afternoon. As usual the time is too short. We will be considering this bill clause by clause in the week of March 6.

Mr Gary Wilson: Mr Chair, could I just ask the committee members whether they would like to hear from an official from the Housing ministry on the issue of the fire code that was raised? He has a brief explanation that I think would be welcomed by everyone.

Mr David Johnson: Why don't we have the deputants first, and then at the end of the day, that would be helpful.

The Chair: That sounds like a reasonable suggestion to me.

I would also like to bring to the attention of members that this morning someone asked for a copy of a survey. That survey is now in front of everyone.

CITY OF LONDON

The Chair: The next deputation is from the city of London. Good afternoon again. You have been allocated one half-hour for your presentation, and the members always appreciate some of that time to talk about it.

Mr Tom Gosnell: Thank you very much, Mr Chairman, and thanks to you and the committee for the opportunity to speak here today.

You should be aware that the council of the corporation of the city of London has passed a resolution opposing this proposed legislation. The chair of our planning committee, Councillor Ted Wernham, and I are here today in an effort to outline the critical shortcomings council and our staff see from a planning, financial and

safety perspective. We are taking the contrary position based on facts and an enviable track record for planning, not political ideology.

I would also like committee members to be very clear that the city of London has been proactive in the creation of residential intensification and not merely taking an adversarial position. Our council's record is one Londoners can be proud of and offers solutions for the provision of safe, affordable housing.

If this legislation is passed in its present form, we fear it will strike a blow at the very heart of the value of most Ontarians' largest investment and that's their home.

At this juncture, I would ask Councillor Wernham, chairman of city council's planning committee, to present a brief history of what measures we've taken and what we are doing today as a municipality.

Mr Ted Wernham: In 1990 a residential intensification study was completed in London. That was a multifaceted study aimed at residential intensification and looked at the ability of existing properties to support new households; the potential demand for units; and the physical potential of the existing building stock. So as you can see, we're not standing idly by.

In January 1991 the city of London established a home planning advisory service to provide assistance to home owners who wished to create an additional unit in their residence. As well, the city of London official plan already includes policies that promote residential intensification in appropriately identified areas. The work continues in another area as well.

I feel the committee members should also understand that the city of London is currently developing a city-owned subdivision of 321 lots, 48 of which will contain made-to-convert residences.

London's official plan also contains policies that will further designate intensification and infill, but subject to consideration of neighbourhood planning and adequate servicing.

The question of servicing takes us into another critical area that has all but been ignored in this as-of-right concept. Doubling or tripling residential units will have a significant effect and strain on hard services such as sewers, water systems and others that are not designed to meet extreme demands.

Bill 120 also ignores the municipality's requirements regarding parking. This will unquestionably lead to parking abuses, turning residential front, rear and side lots into ad hoc parking lots. This proposed legislation even allows for intensification in town house projects. Density in those units has already been set to the outer limit of tolerance. This legislation pushes that beyond responsible planning for quality of life and for safety issues.

From a safety standpoint, our city of London fire department has grave concerns about as-of-right basement and attic apartments, garden suites or granny flats. Basement apartments, because of the smaller windows and, for the most part, one entrance in and one entrance out are, in a working fire, considered to be one of the most dangerous, intensely burning blazes faced by firefighters.

In August of last year, the Ontario Municipal Fire

Prevention Officers Association presented a lengthy brief to the ministries of Housing and Municipal Affairs which I urge you all to read in detail. I've attached as an appendix a copy of this report to our presentation. It's page after page of problems and potential threats to the safety of our people.

Mr Gosnell: We'd also like to make you aware of the January 7 editorial in the London Free Press. I think that, this one time anyway, this newspaper's stance clearly reflects the broad-based community opposition to many of the provisions in Bill 120. I quote:

"At the least, the province should make its accessory apartment provisions permissive. The same as proposed for garden suites, with the final control resting with the municipality."

It goes on to add:

"What are the safety, fire, and other regulations governing these apartments? Who pays for the staff to inspect them? Who pays to enforce these laws? The province may be setting the rules, but the local municipalities may end up paying the price. The government's heart is in the right place, but its head is in the clouds."

The government's major thrust with Bill 120 is to create more affordable housing. We understand that, but we also believe this legislation is a Toronto-driven solution applied with a very broad brush across the province. Extensive and ongoing research by the city of London's community improvement division reveals that 65% of housing stock in the city of London already meets the province's criteria for affordability. Add to that a consistently high vacancy rate of 4% to 5% in rental units. Therefore, it leaves us asking the question why? Why is this legislation, despite the protests of municipal politicians and community groups, moving ahead with such great speed?

Just this past week, Canada Mortgage and Housing Corp released figures that earmarked the city of London as the number one centre for housing starts last year. Of special interest, the committee should note that CMHC says the construction of semidetached housing, row housing and condominiums made up London's enviable position. The report also says an increase of 6% was experienced in single, detached units. These numbers indicate to me that the work our citizens and council are pursuing in housing is working for citizens across the economic spectrum.

At a public meeting held at London city hall last year, community groups and neighbourhood associations representing a broad cross-section of the socioeconomic fabric of London stepped forward to say no to Bill 120. The opposition was as diverse and as broad as the very mix of the people who make up our community and invest their life savings in their principal residences. Spokesperson after spokesperson from virtually every area of the city told our council they do not want the real estate value of their homes converted from a free market value assessment to one based on the potential cash flow of putting an increased number of bodies into potentially inappropriate settings.

Listen to these home owners as our council did. In

spite of similar meetings across Ontario, I've heard some government members presenting statistics from a survey that says 75% of Ontarians agree with basement apartments. That may be, but I doubt the people responding were ever told in what context these units and additional flats would appear on the landscape, or that they would be as of right. To use that figure as a rationale for the majority thinking of Ontario is incorrect and it's irresponsible.

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Government members have also trumpeted unsubstantiated figures about the number of illegal apartments that exist in Ontario. How does one qualify and quantify numbers like that? A registry of illegal apartments, to my knowledge, does not exist in this province. Again, to use those numbers with an air of official credibility attached to them is dangerous.

In closing today, on behalf of London city council, we believe that Bill 120 is not only ill conceived, but it mixes unrelated issues dealing with tenants' rights issues in residential facilities. Quite simply, the province has not listened to municipalities which will ultimately suffer from this flawed piece of legislation.

London has demonstrated through local initiatives and controls that properly planned residential intensification can take place in a sensitive, cost-effective fashion. In fact the members of the Legislature for London Centre, London South and London North all live in residential areas where a broad cross-section of housing is available at all prices. These neighbourhoods are among some of the most sought-after places to live in London. Why is that? Because of municipal zoning, municipal planning and sensitivity to the tangibles and intangibles that constitute a good place to live. Where intensification is a good idea in London, it already happens.

Bill 120 will gut that ability to respond to local concerns with its unbridled as-of-right provisions. Municipally controlled zoning is the basic tenet of local land use and development. Those controls handle a broad cross-section of quality of life issues from health and safety to economic viability to social desirability.

I would urge this committee to recommend that Bill 120 be stopped at this stage and rewritten in true consultation with local government. As a council, we have consulted Londoners in open public forums. Their overwhelming response to these provisions of Bill 120 was a resounding no. Do not allow political ideology to get in the way of decades and decades of planning and controls that have made this province one of the most desirable places to live and to raise a family for people at all income levels.

The Chair: We will start the rotation with the government.

Mr Winninger: I'm sure it won't surprise you, Mr Mayor and Councillor Wernham, that we agree on some things and disagree on others. I certainly think London has made some strides towards introducing affordable housing to various parts of the city. Unfortunately, however, we still have a waiting list for London housing of over 1,000 families. We have a similar waiting list for

cooperative and non-profit housing of over 1,000 families. We know that the number of tenant-occupied households in London that spend more than 30% of their income on housing is 31%, and it goes to 36% for the census metropolitan area. So there is, I suggest to you, an affordability problem.

The other problem I have with the position you put forward is this: London now has an official plan, and the official plan does specify that areas designated low and medium density may be zoned to allow apartments in houses, but there is no requirement. At the same time, areas to be zoned must meet certain criteria, such as second units have to be compatible with surrounding uses and also an area suitable for apartments in houses must include legally established converted houses, other types of multiple housing.

This would largely preclude legalizing apartments in houses in single-family areas, and if we look at the history of planning in London, we find that second units are permitted in parts of the inner city in R2 and R3 zones but that conversions are not allowed in most residential areas. Certainly the standards for houses to be converted require a larger lot than those that are unconverted.

There seem to be a number of cards stacking the deck against people, property owners who wish to exercise the right to convert by having a second dwelling unit in their home, whether it's single, detached or row. That's a problem I have with the position the city is putting forward. I wonder if either of you could comment.

Mr Gosnell: Obviously you and I have had this discussion many times. I think you were at a public meeting a year and a half ago, Mr Winninger, where we had 300 people and I think two or three of them supported your point of view and the rest did not.

Zoning has a history in the province of trying to make sure that we have a society in municipalities where people can live and work together, and I think what your legislation is doing which is most offensive of all is to really take away the right of municipal government to zone lands. That's really the history of local government and why I think our cities have done so well.

I don't disagree with the premise of your government or you in particular that there can be more intensification. Where I totally disagree is that what you are doing so naively, in my view, is changing the zoning of every single-family, row house, town house property in the province of Ontario. That's not going to solve your problem. In fact that's going to create far more problems than you're trying to solve.

I think what you have to hear and I hope you will hear over the next month before you make a decision on this is that council after council will come in and tell you that there are areas of our community that can intensify. There are many areas of our municipalities that simply cannot because of service and land and other conditions that are there. Your legislation does not understand that, does not take that into account and condemns many parts of local communities to a lifestyle change that is totally unacceptable to that local government.

You got elected to sit on the Legislature; you did not get elected to do the zoning of local government. That's the message you're going to hear from every member of council who probably will come before you representing the official position of their council. Unless I'm mistaken, I don't know of a municipality, by resolution, that supports these provisions of Bill 120 in the entire province, but I can sure tell you that the AMO position and the majority, if not all of the positions I've seen to date, do not support what your government's putting forward with these resolutions.

Mr Winninger: Is there time for a follow-up? We as a province have many cities in Ontario, such as London, where the household size, particularly in the inner city, is declining, where there is excess capacity for water and sewer, hard services and soft services like schools and parks. Instead of investing considerable amounts of money in increasing our urban subdivisions, in the interests of compact development does it not make sense to you to utilize that excess capacity in a win-win way?

Mr Gosnell: It does and in fact we do that now. But we do it by zoning applications where we can clearly make sure that those services are in place.

I think you've touched upon the primary concern we have that unless you look at it project by project, area by area, you could create a situation, in White Oaks, for example, an area that you represent, where it's already maxed out to its maximum capacity for water, sewage and other services and yet your provision would allow for that entire area, the size of St Thomas, to double and there would absolutely be no controls on it at all.

Where it makes sense we support what you're trying to say. The problem with your legislation is that it allows every single area of the province that's single-family, row house, town house, two-family or whatever to double in density, and that's the problem with it, because it does not take into regard areas that are already at a point that they simply cannot take any more services.

Mr Winninger: What we heard yesterday—

The Chair: Thank you, Mr Winninger. Mr Grandmaître.

Mr Grandmaître: Mr Mayor, I'm interested in your own planning advisory service, so maybe I should ask Ted or the chair of the planning committee. How did you work this in with the public and how successful were you?

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Mr Wernham: Probably one of the most vocal of all our meetings with respect to representation from the community—in fact, we intend to hold another meeting, as his worship referred to, and have the public come forward. We want to be able to provide home owners with assistance with regard to those places in the city where it would make good zoning sense and good accommodation sense to have these additional units. We took this into account while we were reviewing our official plan policies.

Mr Grandmaître: Did you need to change your zoning bylaw to accommodate or to assist people to provide this intensification?

Mr Wernham: Yes.

Mr Grandmaître: You did?

Mr Wernham: Indeed, because we went through a process where there was a total zoning reform just recently and that was one of the components.

Mr Gosnell: If I might say on that, we looked at a specific area of residential intensification and included that concept in a plan. It was with, I believe, your government that we were the first local government to sign an intensification document. That's the kind of thing we would encourage continuing to take place between the province and local government. We all want affordable housing. We all want intensification, the use of services, whether they are there or not and underutilized. But clearly all of us live in cities where we can all think of parts of the municipalities that simply cannot take any more density. Unfortunately, what's happening is that this bill is going to throw that in with all the other areas and it doesn't make any sense.

Mr Cordiano: Just to follow up on that same thought very quickly, what I think I'm hearing is that there is some room to allow for basement apartments to exist as long as municipalities have the authority to determine where they might be located through their zoning bylaws.

Mr Gosnell: Yes; not only where but that they be done properly to meet the code.

Mr Cordiano: Yes, of course.

Mr Gosnell: They don't necessarily have to be apartments; they can be a division in the house. You can think of any number of different ways for it to be done. There are opportunities for garden suites and we're not disposed to not having those. What we're saying is that not every single property in a community can either be divided into an apartment or can have an additional garden suite added to it. There has to be discretion. That's why we have a history of zoning in the province of Ontario.

Mr Gary Wilson: There is discretion.

Mr Gosnell: There's no discretion as it relates to as-of-right accessory units in residential—

Interjection.

Mr Gosnell: No, that's as of right; that's not discretion.

Mr Grandmaître: You say "the residential intensification and appropriately identified areas." How did you do this through your zoning bylaw? How did you identify these properties?

Mr Gosnell: On the area that we dealt with with the previous government, we looked at a Hamilton Road area where we had setbacks off the road. We had engineering studies done on the capacity of the roads, the sewers, the water systems. We did a review of the school system, of the parks system. We looked at all the different components that make up amenities to living in a community and we realized that we had areas in the community that could have more intensification and therefore lead to more affordable housing. That's why we entered into the intent to get into the residential intensification which we have included in our official plan.

Mrs Dianne Cunningham (London North): It's a pleasure, of course, to see our municipality being represented so ably. I think I can speak as a former member of the planning board where we used to look very carefully when we had delegations coming to ask us if they could increase the usage of their homes in permitting these residential units, detached, semi-detached and row houses. As I remember, it was pretty well received as long as all of our own bylaws and what not were followed, so this brings back some memories.

I have some difficulty sometimes with some of the figures that are used by the government in this regard too, and I thought Mr Winninger said it very well when he said that the cards are stacking against our position from time to time. I agree with him, sometimes they are.

Unfortunately, in this instance I think the cards are stacked against the public. You raised the issue of the question with regard to the 70% number that's being used. The question is this: "Do you strongly favour, somewhat favour, somewhat oppose or strongly oppose allowing owners of houses in Ontario to add one"—one—"self-contained apartment to their house to increase the supply of housing?" Quite frankly, if I was asked a question like that, I'm surprised that 100% didn't agree with it. I'm surprised that 30% opposed it, because I think that under many circumstances that should happen.

That's what we had last week. Mr Winninger and I had a friendly exchange on a television program and he stated that 70% of the citizens of Ontario were in favour of, in this case, basement apartments. Now you're objecting to that number, and I wondered if you'd like to expand upon it.

Mr Gosnell: I don't think the question makes any sense, quite frankly. If you had asked the question, "Do you want basement or accessory apartments as a right in every location where anyone in a single-family, row house or town house so chooses?" I think you'd find that 100% of the population would probably say no. So it's like anything else: It's how you phrase the question.

I think you've pointed out that it's a real motherhood question, but the real guts of what we're talking about is, do you want every residential property, regardless of servicing capability, to have the opportunity to either be doubled or tripled in density? That question was not put to the public.

Mrs Cunningham: On the second question that I have, I'm searching for the answers, so I'm just reading the bill with regard to the explanatory note. Do you know anywhere, in any province, that a bill like this could amend a planning act—and I'm going to quote now. It amends the Planning Act "to ensure that official plans and bylaws cannot be used to prohibit two residential units in a detached house, semi-detached house or row house." Is there any province that would have taken that responsibility away from the municipalities, that you know of?

Mr Gosnell: I don't know of any. I can't even find a municipality in the province that supports anything to do with as of right, let alone finding a province that's endorsed it.

Mrs Cunningham: I think my questions speak for themselves.

Mr David Johnson: To the mayor and the councillor, what I'm hearing through this deputation is a municipality that's very well planned, a municipality that has planned considering intensification, affordability issues, parking, services; a planning process that involves the people who live there and work there, who understand the conditions in the city of London, and not an exercise by academics or somebody from some remote location. Yet the minister is saying that the planning that you put in place is snob zoning and the minister is saying that you haven't planned properly, that you haven't planned for enough affordable housing, for example.

I wonder, having gone through this exercise and considered all these factors and worked with the people and come up with the wonderful community that you have, what is your reaction when you hear those kinds of comments from the minister?

Mr Gosnell: I think it's just mind-boggling that the minister would call it snob zoning, because it doesn't affect just large estate lots, which sometimes the public has the impression are the only lots that are being touched. In fact, every two-family zone, every triplex, every row house, every town house will be affected by this as well. I think I could make the case that the area that is considered the least snobby, in her words, probably meaning income, would be the most damaged by this legislation. So I find that her comments really are without foundation. Perhaps she had a bad hair day. I'm not sure why she said it like that, but the point is that she never got elected to do local zoning, and I think what the government is intending to do with this is to take away that right. I don't know that any of the members of this Legislature should take a decision to remove local zoning issues from local government lightly.

Mr David Johnson: My sense is that what's required and what municipalities need are more powers in terms of entry to address the problems: the property standards problems, the safety issues that occur. As you know, today if you knock on the door and try to get in because of a complaint, you can be refused entry. Number one and maybe number two: for the province to set guidelines or targets for affordable housing, which they've had, and then allow you at the local level to have flexibility, permissive legislation to meet those kinds of targets. I wonder what your views would be on this kind of approach.

1630

Mr Gosnell: I'll answer the question on the entry. Perhaps Councillor Wernham could talk about guidelines that we could work out with the province.

We have for some time asked for the ability to look at zoning infractions and entry opportunities where we think there's a health or safety risk or a zoning or a residential density risk. This bill doesn't do that, but there is legislative opportunity to give authorities at the local level the right of entry to make sure that our zoning bylaws are being complied with and, more importantly, that the safety and health issues are being complied with as it relates to guidelines.

Mr Wernham: It's our contention that the government's mixed up between affordability and accommodation. There's no way it can be demonstrated that by simply doubling the density in any particular area it makes an area more affordable. We're concerned that these types of solutions aren't carefully thought out and in fact will become more damaging to the infrastructure that we have to rely on currently.

To respond to a comment that speaks to the opportunity to intensify in the inner core, we're not necessarily convinced that everyone wants to live in a higher density inner core. We feel there should be some opportunity to enjoy the amenities that exist in the fringe areas of our cities as well.

What we've done in taking a look at our official plan in a subdivision that we have ourselves being planned is to try and accommodate the affordability issue rather than the accommodation issue.

The Chair: Thank you, gentlemen, for appearing before us. As you know, we will be considering this bill clause by clause the week of March 6.

ORCHARD HEIGHTS AND TOWN AND COUNTRY
HOME OWNERS' ASSOCIATION

The Chair: The final presentation for this afternoon's meeting comes from the Orchard Heights and Town and Country Home Owners' Association, Fran Wallace. The committee has allocated one half-hour to your presentation. I would note that all members have a copy and some background material, so you may introduce yourself and indicate your position within the organization and begin.

Mrs Fran Wallace: My name is Fran Wallace and I am the immediate past president of Orchard Heights and Town and Country Home Owners' Association, which is located in Mississauga.

I had the privilege of serving as president of the association when Bill 90 was originally introduced in the Legislature in 1992. I was so horrified by the implications of the bill at that time that I immediately ensured the residents of my neighbourhood were fully aware of its implications. You have attached in my remarks package the individual comments of home owners in my neighbourhood regarding this issue. This is not a petition. They are individual comment sheets completed and signed by the residents. Out of the 455 residences in our area, 183 home owners took the time to respond and only one resident favoured the bill.

I'm here today to speak on behalf of my association and convey our strong opposition to Bill 90 or, as it is now known, Bill 120. My remarks are my personal feelings but they reflect the consensus of the concerns of my association.

I'd like to start out my comments by expressing my anger at Minister Gigantes for hiding the implications of Bill 90 by incorporating it into a new bill which includes unregulated care homes, Bill 120. The government seems to be focusing the discussions on the need for tenants' rights in care homes, and while this is an important issue, the accessory apartment and garden suite issue seems to be taking a back seat.

The minister has a lovely report, the Lightman report, and its recommendations to justify the actions being taken on the care home side of the bill. The old Bill 90 side of the current legislation, the accessory apartment and garden suite side of the equation, is so unpopular, and she knows it, that it is quite obvious she is trying to slip it into law on the coattails of the care home issue.

I resent being manipulated in this fashion and I would rather see the entire bill die than pass it, because half of it possibly has some merit. It's a sleazy move that tends to justify and further the public's distrust of politicians. I am not prepared to speak on the issue of care homes. My remarks will focus on the accessory apartment and garden suite portion of Bill 120.

I'd like to clearly state at this point that I feel there is some need for legislation to protect tenants and the landlord in what are currently illegal apartments. Bill 120, however, is so flawed, it's a recipe for chaos.

First, we must take into account that the legislation permits absentee landlords and has opened up the definition of what constitutes a "household." This means that a person can buy six houses on my street and install 12 tenants in those houses, of which any one of those tenant groups could consist of 15 people. Tenants in this situation have far less commitment to Orchard Heights than home owners and even less because of an absentee landlord situation. So much for the sense of community which has been a part of Orchard Heights for over 40 years.

As-of-right accessory apartments in every home and town house across the province is wrong. The directives from the province in the late 1980s encouraging higher residential density on new property development has resulted in some pretty tight living quarters for residents, particularly in town house developments. City planners have designed these new developments to already accommodate as many people as possible in as little space as possible, and now, with this legislation, the density of these developments could be doubled. There's no doubt that when people live in spaces that are too crowded, violence erupts and pride of ownership decreases. We'll be legislating ghettos.

I know the NDP is promoting this bill because it will increase property usage in older areas which are underpopulated because the children have moved out, and to the casual observer, Orchard Heights, which was built in the early 1950s, would fit this description. However, Orchard Heights points out the flaw in province-wide legislation. Exceptions to the norm cannot be accommodated.

Since we moved into Orchard Heights 14 years ago, the area has been transformed from empty-nesters to a wonderful mix of original owners and young people raising their families. There is also a growing tendency for children to live with their parents longer. I know several residents in the area with kids in their late 20s still living with their parents.

Other considerations: The public school in the area was sold in 1980. We have no school. Our water system is rusting and it requires replacing. The telephone system is running out of lines for the area. The houses were built

with single-car driveways. The legislation requires no designated parking spots for tenants. There are no sidewalks in the area so any extra cars parking on the road become very dangerous to pedestrians and particularly our children.

The city has identified a lack of recreational facilities in our planning area. We have no community centre and because we're a fully settled area, finding a location for a recreational facility will be very costly, and this bill could double the number of people living in Orchard Heights. It's wrong. Mississauga knows my area's capability and needs, not the province, and any approvals for accessory apartments should be determined by my city council, not the province.

Education costs are 63% of my municipal tax bill. Sending just one extra child to elementary school costs \$2,226 a year in municipally collected tax dollars. Yet the way this bill is structured, there is no mechanism to collect the increased taxes required to cover municipal services, let alone the education costs for accessory apartment dwellers. I know the NDP feels that the extra taxes will be collected by accessory apartments, but they're wrong. The assessed value of a house must increase by \$5,000 before any municipal tax increase can be levied.

In my area, most of the houses already have finished basements. Any adjustments to accommodate tenants would be minor and not increase the value of the home substantially, if at all. In new homes where the basement has not been finished, most of the increased value would be swallowed up in the \$5,000 benchmark, meaning little tax increase would occur. It would not cover the extra cost of sending even one child to school for a year.

It should therefore come as no surprise that those residents who elect not to have accessory apartments will wind up paying the extra costs incurred by the accessory apartment dwellers, not the landlord. That prospect is infuriating to those of us who elect not to have accessory apartments. The legislation discriminates against those of us who elect not to have accessory apartments.

I also object to the way the NDP is promoting this bill as a means for seniors or first-time buyers to supplement their incomes. The very nature of an accessory apartment in a residence designed as a single-family dwelling means that the relationship with the tenant is different than that of a tenant in a building designed to be a multiple-tenant facility. It cannot be an impersonal relationship and if the landlord-tenant relationship turns out to be problematic, it is much more serious than that in a regular, large apartment situation. It takes months of documentation, stress and legalities before the problem is resolved.

For those on limited incomes who felt this was a terrific means to supplement their income and help pay for the house, it may wind up being the reason they default on their mortgage payments and lose the house. By utilizing the standard rules of the Landlord and Tenant Act in Bill 120, many unsuspecting landlords will be caught up in a nightmare that has been promoted by the NDP. I would think this is one political hotbed that the NDP would wish to avoid.

Let me quote from a letter sent by John Dowson,

chairperson of the Newmarket Citizens Task Force on Apartments in Houses, to the editor of the Toronto Star on November 14, 1992:

"With regard to the increased traffic, increased school enrolment and parking I can speak with authority. I live on a suburban block of 32 semi-detached, single-family housing units, and between 1978 and 1992, 17 of these units have been converted to living areas up and down. Of these 17 units, 11 are owned by absentee landlords, seven out of the 17 units have been converted and are still served with 60 amp electric power and only six are complete apartments; the remaining units are below-grade rooming houses. Further, as far as can be ascertained, only five of these units have laundry facilities.

"A recent real estate ad for one of these units listed four bedrooms in the basement with shared kitchen facilities, which were a microwave oven, a hotplate and a refrigerator. They are not affordable; these units rent for the same as any one- or two-bedroom apartment, and sometimes more. School enrolment at the local elementary school has increased by 35% in an area where no new houses have been built since 1958. On-street parking has tripled, garbage is left out at the curb every day—we have one pickup a week—and crime has increased."

1640

Mr Dowson is living the nightmare that I'm trying to avoid by opposing this bill.

As for the garden suites, or granny flats, the legislation for this form of housing is also poorly thought out. Permission for these dwellings is limited to 10 years. I know I wouldn't put any above-required funding into a structure that is only going to be in existence for 10 years. So how comfortable and, more importantly, safe are these structures going to be for tenants?

How do you enforce the removal of a building from a property after 10 years? Great. Just what I want in my neighbourhood: abandoned buildings. That's an invitation for trouble, which of course brings up the fact that lack of definition in the bill means that granny flats can be vans or trailers. There's also no guideline regarding the placement of the granny flat. I do not wish to live in a trailer park. I don't wish to see trailers in my neighbour's front yard.

By forcing municipalities to ignore the local property standards and zoning bylaws and strictly follow the Ontario Building Code, accessory apartments will actually have lower standards than any other form of housing in Mississauga.

I understand the government is currently working to improve the fire code regulations as a follow-up to this bill. The thought of trusting the current government to develop adequate fire code regulations after this bill is passed is very scary. When one looks at the structure of Bill 120 and realizes how badly it's botched in response to an issue we pretty well all agree needs an answer, it certainly doesn't give us taxpayers much confidence. Give us the detail on the fire code changes before the bill is voted on.

If this bill is passed as it currently stands with the fire code regulations as is, the same fire hazards will exist for

tenants. We've already had one recent example on New Year's Day of inadequate fire regulations in an existing illegal apartment in Mississauga. The proposed legislation wouldn't have helped those unfortunate people. This whole area of the bill is inadequate and it needs refinement before it's voted on.

There is only one good aspect to this bill, and that is because it improves the municipality's ability to access apartments to inspect. But even then the city of Mississauga finds the legislation defective in that it will only permit enforcement of the Ontario Building Code and property standards through a complex procedure of obtaining warrants on reasonable grounds. Few reasonable grounds can be determined in advance without access to the premises.

In summary, my opposition to this bill is also based on a violation of my rights. I am being discriminated against, and I resent it. I choose to live in an area of single-family residences. I worked hard to achieve enough success in my career so that I could afford to live in Orchard Heights. This legislation will mean the end of single-family residential areas. It's not as though I'll be able to move somewhere else to live in a single-family residential area. They won't exist. I'll have to move out of province to find my preferred housing style. It's so wrong.

Bill 120 also takes away people's hopes and dreams. So many of us dream of owning our own home to raise a family. It's something we aspire to: buying the best house in the best area we can afford. It's a reward for success. Bill 120 takes away that incentive to achieve, and what is a society without goals?

Bill 120 needs massive improvements before it is passed. To use a familiar expression, if a job is worth doing, it's worth doing right. The illegal apartment issue needs to be addressed; it just needs to be done right.

Mr Daigeler: I appreciate your presentation very much because I think it points out some of the real issues and the real concerns and how they affect the ordinary person. I should say one thing. In the briefing that the ministry and the minister gave to us at the beginning of these hearings, they did say that this bill will allow one extra apartment in self-contained houses provided that reasonable building, fire and planning standards are met. Now, they also added that these new standards are going to be developed as regulations. Frankly, this is something I haven't heard very much about yet from the government side, and perhaps they may address this later on.

Have you had any kind of indication through your contacts what these regulations might be? I could visualize that some of the requirements that the municipal representatives have been talking about would be included in these regulations. We haven't seen it. All I see here is this very small reference on this paper that was presented to us. I'm just wondering whether, first of all, you've seen or heard anything about this, and secondly, whether you think that if there are such regulations established by the provincial government, that could possibly soften your concerns about this bill.

Mrs Wallace: I have not been given much of a chance to prepare for this presentation. The information

I have is thirdhand. I understand that the fire chief in—I don't know whether it's Peel or whether it's the city of Mississauga. He is involved in the committee that is helping to develop the guidelines for the fire code regulations. My understanding is that he does not feel they are going far enough. I understand that they're talking about putting in fire safety walls and improving the doors, that sort of thing.

Mr Grandmaître: Sprinkler systems.

Mrs Wallace: That's what's missing, I understand. That's what I was told. Again, this is thirdhand.

Mr Daigeler: I think you're right.

Mrs Wallace: In terms of how it's going to be hammered out, I don't know the specifics on it. I agree that there definitely have to be some improvements on it, but by the same token, I think I've demonstrated fairly clearly that there are a lot of real problems with this bill. I'd rather see those recommendations in print before this thing is voted on.

Mr Grandmaître: Also, in order for these apartments to qualify as a basement apartment or an accessory apartment, they will have to register them. A lot of people will hesitate and won't register their illegal basement apartments.

Mrs Wallace: Oh, I'm quite sure of that.

Mr Grandmaître: I'm sure that you're not going to have a flood of people walking into the registry office and saying, "Look, I've been leasing out an illegal apartment for the last 15 years, and this is it, and just walk in and inspect it," because it would be very costly for these people to renovate, to upgrade the needed services to make these apartments legal.

Mrs Wallace: I agree.

Mr Grandmaître: On page 5, you say there's only one good aspect to this bill. I don't think you should say it is one good aspect because it won't give municipalities more access. They'll still need a warrant.

Mrs Wallace: I think what I said was there's a glimmer of hope there.

Mr Grandmaître: A glimmer of hope.

Mrs Wallace: But the city is definitely saying that it doesn't go far enough.

1650

Mr Grandmaître: I think municipalities should be given all rights to enter any premises and to inspect—

Interjection.

Mr Grandmaître: Yes, not only the fire prevention people but municipal—

Interjection.

Mr Grandmaître: You can have your say, Gord, after. As a former inspector yourself, a provincial one, I think municipal inspectors, building inspectors, plumbing inspectors, electric inspectors, should have access to your home if they think your home is not, let's say, meeting all the requirements. Right now municipal inspectors are being prevented.

The Chair: Are you hoping for a response?

Mr Grandmaître: No, that's the next paragraph.

Mrs Wallace: Can I respond?

The Chair: Certainly.

Mrs Wallace: One thing I'd like to say is that I know the city of Mississauga is extremely concerned because all the extra inspections are going to require extra people, time, money etc. I don't feel I am knowledgeable enough to really express any definitive answers on that, but I just point out that's a bit of a problem, too, from what I can see.

Mr David Johnson: The city of Mississauga has actually said it would need 87 extra fire fighters.

Mrs Wallace: Is that right? Well, good for them.

Mr David Johnson: I would like to congratulate you on your presentation. Many of the points you've raised are points that I made in the opening presentations yesterday. Right off the top you've done quite a survey, obviously, of the people in your area. The government's done its own survey and I wonder what your reaction is to that. They say that 70% either strongly favour or somewhat favour the legislation, but their question doesn't indicate—the words “as of right,” for example, aren't in the question.

Mrs Wallace: Yes. I saw that in the minister's statement in some of the background documentation I was given. It was an Environics poll.

Mr David Johnson: That's right.

Mrs Wallace: I can well imagine the way the question came out. I don't think there's any objection. People are saying, “Yes, we need to have some legislation for illegal apartments.” That's not anything anybody is disagreeing with, I don't think. The point is how this legislation is put together. That's the travesty. This stuff is awful. It's so full of holes. It's so full of errors. Nobody disagrees that we need to do something about illegal apartments; it's how we handle the issue.

Mr David Johnson: Since you do mention absentee landlords, and from my previous experience at the municipal level I know that has been a thorn in the side of a lot of councils, I wonder if your home owners' association has personally had dealings with instances that involve absentee landlords.

Mrs Wallace: No, none at this point. We have three rental properties in the area—they're renting the entire house—where the landlord does not reside there. A couple of them have lived there for 20 years, so there's not any real problem there. The third one is a house that sides—is that the word?—on to a main road and it's at the entrance to the neighbourhood and we have a real difficulty keeping people in those houses because they are on the edge of Dixie Road and it's very noisy and things. We sort of try to ignore them and use them as a buffer. There's been a lot of change over there, but I can't say we've had any real problem.

Our area is very special in the sense that we have at least a dozen, maybe 15, what I call three-generation families in the area, and that is, people bought the houses in the 1950s, they still live there and now their children have moved into the area and are raising their children there. It's quite a special area in the sense that so many people are so close to one another and it really is a sense

of community. When I talk about six houses on a street being bought up, it really has a major impact in our area.

Mr David Johnson: This hasn't been discussed a whole lot, but you talked about the granny flats and the fact that they would be in existence for 10 years and what happens at 10 years and one day.

Mrs Wallace: That's right.

Mr David Johnson: It just sort of boggles the mind if the municipality would require the demolition of this. In many cases the granny flat would probably violate the coverage, the floor space index, so once the 10-year agreement is up, I guess the thing would have to be demolished. You'd wonder who would ever invest in something under those circumstances.

Mrs Wallace: Yes. It's one thing to build it so that it's there; it's another thing to have to invest money to take it down. The other option on that is that you get the permission for 10 years. Suppose granny dies in six. You don't have to take it down for four years. You've got permission to have it sitting around for another four years.

Mr David Johnson: And most likely a request to carry on, even though granny's no longer there, for a longer period of time.

Mrs Wallace: Even if granny isn't there, are you going to spend the money to take it down? Likely not. We have a golf course next door to our place and the caddy shacks out in the golf course are just demolished during the winter months when they're not in use. All this would be is a vacant building for these kids to do whatever they want to do. I see it as a real problem.

Mr David Johnson: My time's probably running out. I'd just say I think you were trying to be kind actually in terms of the one good aspect of the bill.

Mrs Wallace: The intention is good.

Mr David Johnson: The good aspect is only in the eyes of the government itself. I think you'll find that all of the municipalities, and we've certainly seen it from the two municipalities that have been here today, feel that the right of inspection is very minimally improved and nowhere near what municipalities need.

Mrs Wallace: That element was one element I was trying to look up at about 9 o'clock last night. I wasn't getting a whole lot of help from anybody, so just from the background reading I have done on it, I couldn't give you a really clear definition of how much it improves the situation, although I gather it improves it a bit—

Mr David Johnson: Not much.

Mrs Wallace: Not much.

The Chair: We've been waiting all day to hear from Mr Mills.

Mr Gordon Mills (Durham East): I've heard a lot. Thank you for coming here this afternoon. I'm going to take particular umbrage at your comment about granny flats, as you have caddy shacks in your area that dilapidate.

I'll tell you, first of all, that in the riding I represent, there are a number of elderly people. We all know that health care costs the earth for elderly people and we all

know, and I should know particularly because I'm getting up into that age group, that when they get older and are separated from their families, their health deteriorates rather rapidly. I have evidence of that and probably you have too.

People come to me about this legislation and they say, "We think this is a fine idea to have a granny flat." I obviously have come to the conclusion that you don't know anything about granny flats, because you say in your brief—

Mrs Wallace: Excuse me?

Mr Mills: You don't know anything about them.

Mrs Wallace: I'm afraid I do.

Mr Mills: Okay. So how comfortable and safe will these structures be for the tenants? Well, I can tell you that there are thousands of granny flats or garden suites in the United States that are being used now. There are thousands of the same structures being used in Australia and New Zealand.

In my riding, I have a manufacturer who makes these. He lives there. He's going to come before this committee to present his brief. I've seen models of these granny flats. They're sectional. You carry them in between the buildings. Further than that, they have various types of designs that match the house. If you live, as I do, in a siding-type house, they will go to great extent to make that compatible with that house. So they won't stick out like a sore thumb.

I can tell you another point about these granny flats. We all know that people when they get older are living on a limited income. The cost of health care and private nursing homes is escalating, forcing some of these people to live rather substandard, and they would much rather live near to their families.

The proposal that my constituent has in the construction of granny flats is that you sign a lease with that company and the lease cost of that granny flat on your property is less per month than the cost of compatible nursing care, including the hookups to the hydro etc. So there we have not a shed in the garden; we have wonderful looking—I must say I've seen the photographs of these buildings and I know this committee will see them when the gentleman comes here—really what I consider first-class accommodation for seniors, compatible with the area they've been placed in, a lease arrangement that makes the people able to afford them, and that lease will relieve your suggestion that they're left there to rot. When the use for that senior is over, that lease then will be terminated and the thing moved on to another senior who is waiting.

I see this, not as you see it, as scary, abandoned buildings in the neighbourhood and an invitation for trouble; I see this as a very compatible use for land and in keeping with the buildings there, and it also serves the purpose of making our elderly people able to afford good

accommodation and to be near the people they love. That to me is very important.

Mrs Wallace: I don't disagree that having your elderly parents or whatever close by is something we would all desire. However, I don't care if it is a nice-looking building. If you stick it in your side yard and I'm looking at it out my front window, or it's in your front yard and I'm looking at it, I don't care, I don't want it. I don't want to see that on my streetscape.

There are problems with this legislation. You can stick those things anywhere. They've got to be placed properly and there have got to be guidelines for them. Secondly, the legislation right now does not say it's a lease situation. At the end of the 10 years, they're going to come and take it away.

Mr Mills: It's an arrangement with the municipality.

Mr Grandmaitre: What's this?

Mr Mills: The municipality; it's an arrangement.

Mr Grandmaitre: It is?

Mr Mills: That's what it is, exactly.

Mrs Wallace: But the legislation does not say that, though.

Mr David Johnson: How would you like to sit on the municipality that's going to go in and take those out after 10 years? Good luck.

Mrs Wallace: The legislation does not say that.

The Chair: Perhaps the discussion should be with the presenter.

Ms Wallace: It may be a great, "Gee, that's one solution," but by the same token it doesn't say that in the legislation, so let's fix the legislation.

Mr Grandmaitre: Bring in an amendment, Gord.

Mr Mills: I've great confidence in granny flats. I might need one.

The Chair: That completes the 30 minutes you've been allotted. Thank you for your presentation. We very much appreciated it and we will be commencing the clause-by-clause during the week of March 6.

Mr Wilson had noted that someone from the ministry might be prepared to—

Mr Gary Wilson: Perhaps we can wait until tomorrow. It will probably come up again, Mr Chair, so maybe when more people are here, more of the committee members.

The Chair: That would be fine, Mr Wilson. I would inform the committee that tomorrow we will be commencing at 10:30. Mayor Lastman is ill. He is not able to be here at 10 o'clock so there is a cancellation. The clerk has worked very diligently to try to place another presenter in that time slot but we have been unsuccessful, so we will start tomorrow morning at 10:30.

The committee adjourned at 1704.

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Wessenger, Paul (Simcoe Centre ND)

White, Drummond (Durham Centre ND)

**In attendance / présents*

Substitutions present/ Membres remplaçants présents:

Conway, Sean G. (Renfrew North/-Nord L) for Mr Sorbara

Jordan, Leo (Lanark-Renfrew PC) for Mr Arnott

Mills, Gordon (Durham East/-Est ND) for Mr Morrow

Wilson, Gary, (Kingston and The Islands/Kingston et Les Iles ND) for Mr Wessenger

Winner, David (London South/-Sud ND) for Mr White

Also taking part / Autres participants et participantes:

Cordiano, Joseph (Lawrence L)

Cunningham, Dianne (London North/-Nord PC)

Turnbull, David (York Mills PC)

Clerk / Greffier: Carrozza, Franco

Staff / Personnel: Luski, Lorraine, research officer, Legislative Research Service

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Third Session, 35th Parliament

Assemblée législative de l'Ontario

Troisième session, 35^e législature

Official Report of Debates (Hansard)

Wednesday 19 January 1994

Journal des débats (Hansard)

Mercredi 19 janvier 1994

**Standing committee on
general government**

Residents' Rights Act, 1993

**Comité permanent des
affaires gouvernementales**

Loi de 1993 modifiant des lois
en ce qui concerne
les immeubles d'habitation

Chair: Michael A. Brown
Clerk: Franco Carrozza

Président : Michael A. Brown
Greffier : Francò Carrozza



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STANDING COMMITTEE ON GENERAL GOVERNMENT

Wednesday 19 January 1994

The committee met at 1030 in the Humber Room, Macdonald Block, Toronto.

RESIDENTS' RIGHTS ACT, 1993
LOI DE 1993 MODIFIANT DES LOIS
EN CE QUI CONCERNE
LES IMMEUBLES D'HABITATION

Consideration of Bill 120, An Act to amend certain statutes concerning residential property / Projet de loi 120, Loi modifiant certaines lois en ce qui concerne les immeubles d'habitation.

The Chair (Mr Mike Brown): The standing committee on general government will come to order. The purpose of the committee meeting today is to consider Bill 120, An Act to amend certain statutes concerning residential property. We have a full schedule of presenters today as we continue our public hearings, which will go on for the next four weeks.

COALITION FOR THE PROTECTION OF
ROOMERS AND RENTAL HOUSING

The Chair: I'm pleased to welcome the Coalition for the Protection of Roomers and Rental Housing. You've been allocated one half-hour by the committee for your presentation. The committee always appreciates some time to have a conversation about your presentation during that half-hour. Welcome to the committee, and would each of you introduce yourselves for the purposes of our electronic Hansard.

Mr Lenny Abramowicz: Sure. I'll handle the introductions initially and we'll try to watch the time to allow for questioning towards the end.

Before we begin our presentation, let me introduce our speakers and tell you a little bit about our coalition. My name is Lenny Abramowicz and I'm a staff lawyer at Neighbourhood Legal Services, which is a community legal aid clinic serving low-income residents in downtown Toronto.

On my right is Julie Haubrich. She's a community worker at the Christian Resource Centre. The Christian Resource Centre is a church-based community agency which operates more than 50 rooming houses in Toronto. Although it could claim exemption from the Landlord and Tenant Act or from the tenant protection laws in this province, the CRC voluntarily complies with the laws.

On my left is George King. He's a rooming house tenant in an east-end house which is operated by a non-profit housing provider who has chosen to operate outside of the Landlord and Tenant Act.

The Coalition for the Protection of Roomers and Rental Housing was established eight years ago to secure basic tenant rights for all tenants in Ontario. Our members include several tenants and roomers rights groups, legal clinics representing the needs of low-income seniors and disabled tenants and several non-profit housing providers in Metro and other community agencies.

We first got together in 1985 to respond to the growing number of garbage bag evictions taking place in Toronto rooming houses. Sometimes the tenants had fallen behind in paying the rent, but often the evictions were prompted by less savoury motives. Rooming house operators regularly ignored rent review laws; if their tenants refused to pay illegal increases imposed upon them, they were summarily thrown out. Other landlords sought to convert their rooming houses into more lucrative operations such as luxury flats and trendy offices. Such conversions were legal at the time if the building was vacant, so tenants were ordered to leave and encouraged on their way by physical intimidation, cutoff utilities and midnight lockouts.

Ms Julie Haubrich: Our coalition brought many horror stories to the public's attention and was successful in convincing the Legislature to amend the Landlord and Tenant Act to protect most roomers and boarders from these abuses. This bill, introduced by the NDP, amended by the governing Liberals and supported by the Progressive Conservatives, was passed in June 1987.

However, some roomers and boarders were left out in the cold. Those who lived in accommodation for the purposes of receiving care, therapy and rehabilitation were excluded from the protection of the Landlord and Tenant Act. So were tenants who lived in accommodation where the landlord had some sort of funding arrangement with various government ministries. Our coalition did not like these exemptions. They were vaguely worded, broad and, we believe, unnecessary. But the government did not accept our arguments and so they were incorporated into law at that time.

Mr George King: In the past few years the abuses created by these exemptions have affected the lives of many tenants and caused our coalition to reactivate itself. We have seen some non-profit and church-based housing providers treat their tenants as despicably as the worst slumlords in Ontario. We have talked to seniors in unregulated retirement homes who face massive rent increases and the threat of economic eviction. We have allied our coalition with several groups of disabled tenants like the developmentally handicapped adults in Peterborough who face forced relocation because their landlord has decided to shut down operation.

Our consistent and persistent message to the government has been: Stop discriminating against these tenants. They are already disadvantaged by poverty, illness, disabilities, patronizing labels or the frailties of age. Don't handicap them further by denying them the protection under law other Ontario tenants have as of right.

Mr Abramowicz: The introduction of Bill 120 is the first step towards righting this wrong. We congratulate the Minister of Housing for bringing forth this necessary and commendable legislation. It will bring under the

Landlord and Tenant Act all accommodation where landlords purport to offer care.

Landlords of for-profit care homes will also be under the Rent Control Act. Landlords who receive funding from the ministries of Health, Community and Social Services and others will no longer be exempt from tenant protection laws merely because of this funding. The Residents' Rights Act protects care homes from conversion to other use, and conversion will only be permitted if prior municipal approval has been obtained.

Bill 120, in essence, enfranchises some of Ontario's most vulnerable tenants by extending to them the rights and the privileges that the rest of us already enjoy and take for granted. Our coalition supports Bill 120 and we urge all political parties to do so as well just as all of you supported the extension of the Landlord and Tenant Act to roomers in 1987.

I should point out that today we are here to discuss particularly the Lightman proposals of Bill 120, not the accessory units issue. Although we certainly support the ministry's proposals in this regard, it is our belief that as long as municipalities have the right to evict tenants because their units do not comply with the zoning laws, tenants in basement apartments will also face the threat of garbage bag evictions.

If anything, we would like the minister to expand the bill to include tenants in unlicensed rooming houses under the provisions of Bill 120, but today we are focusing specifically on the positive measures introduced by the ministry to help residents in so-called care homes.

There are some refinements, though, to Bill 120 which we believe are necessary if it's to achieve its goal of protecting all of Ontario's tenants. We have submitted a written brief that we've given to you, which gives a detailed analysis of our concerns and our recommended solutions. We do not have time to deal with each of these in our verbal presentation, so in the time remaining, we would simply like to highlight a couple of the issues of paramount importance to our coalition.

Ms Haubrich: Bill 120 establishes for rent control purposes a new category of housing, namely, care homes. Care homes will be only partially subject to rent control. The charges they make for care services or meals will not be regulated.

Who decides what qualifies as a care home? The landlord. The legislation requires all care home operators to register their properties. The definition of care home is so broad any accommodation can qualify even if it only intends to provide care, and operators of boarding houses stand to gain financially by choosing to register their properties as care homes.

Boarding homes, which have been subject to rent controls since the mid-1980s, are not supposed to be affected by Bill 120. A traditional boarding house offers room and board for only one weekly or monthly rent which is subject to rent control. For example, a landlord who charged \$600 per month for room and board in 1993 will be limited to a 3.2% charge in 1994. Nothing in Bill 120 explicitly deregulates the charge for meals in boarding houses.

But if that boarding house operator registers his property as a care home, he may register separate charges for the accommodation and the meals. At first the total amount charged per room in the boarding house turned care home may not exceed the current maximum legal rent for the unit, which is \$600 in our example. Once registered, though, the care home may raise the cost of meals at will, provided the tenant gets 90 days' notice.

Boarding house tenants whose rents are currently fully covered by rent control will lose a significant amount of protection. In our example, let's say the maximum rent is apportioned as \$100 for the room and \$500 for meals when the building is registered as a care home. A few months after that, the landlord can legally raise the charge of meals to \$800 per month without any justification or appeal and the tenant may end up paying \$900 a month total for room and board instead of the \$620 he would pay under the current law.

A tenant who cannot and does not pay her meal charge will not be evicted for arrears of rent, but she also will not get fed. For people too ill or unskilled to cook or for roomers who lack access to kitchen facilities, cutting meal services is tantamount to evicting them.

Our coalition strongly opposes any measure which would reduce rent protection Ontario boarders already have. We believe the simplest and fairest way to deal with this problem is to ensure that meals provided in care homes are subject to rent control just as they are in boarding homes.

As long as care homes coming under rent control for the first time are permitted to register up-to-date information on the cost of meals they provide, future regulations should not be an unfair burden. Guideline increases will more than compensate care home operators for the cost increases experienced in the provision of meals, as history shows.

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In the last three years, rents regulated under rent control have been permitted to increase by 16% while the cost of food and salaries of food providers and kitchen staff has risen by less than half that amount. Care home operators who offer optional or partial meal plans should be permitted to levy a separate charge just like landlords who offer parking, and future increases in the per-meal charge would be regulated by rent control.

The alternative to regulating meal costs in care homes is to define care homes and care services more narrowly so that boarding home operators would not be able to characterize their houses as care homes, thus escaping rent control. This might present problems since the approach taken in the amendments to the Landlord and Tenant Act is to define care very broadly and to make clear that all accommodations offering or purporting to offer care will be subject to the Landlord and Tenant Act.

It is essential, whichever approach you take, that boarders do not lose their current protection and that definitions in the Landlord and Tenant Act and the Rent Control Act are reconciled to each other.

Mr Abramowicz: Bill 120, as presently drafted, exempts a certain type of narrowly defined accommoda-

tion from the Landlord and Tenant Act. Housing occupied by a person solely—and I underline “solely”—for rehabilitative or therapeutic purposes will not be subject to tenant protection laws if certain criteria or conditions exist. These would include that the majority of residents have a home to go back to, that they are at a rehabilitation centre for a specific time period or until specific goals are met and that the average length of stay is no more than six months.

We accept this exemption since it is meant to apply only to legitimate rehabilitation centres which offer short-term—and I emphasize “short-term”—programs in a residential setting but are not in the rental housing business. An example of the type of rehabilitation centre that would probably be exempted by this section would be drug or alcohol rehab centres where people go in for a six-week program and then are discharged and go back to their homes.

The danger, however, is that unscrupulous landlords and those offering a combination of care and long-term housing will try to escape Landlord and Tenant Act coverage by claiming this exemption. Our coalition believes this would be inappropriate. It is our belief that once an individual has been living in accommodation for over six months or has nowhere else to call home, then the housing aspect to the accommodation must be recognized in addition to the therapy or rehabilitation components. The resident's basic tenancy rights at that point must be recognized as well.

Thus, our message to you is: Do not weaken the criteria that presently exist in this section. Otherwise it is our fear that you may unravel all the good that Bill 120 will do. It is essential that any exemption from the Landlord and Tenant Act be very narrow and clearly worded.

Mr King: The final issue which we will touch on is one of the arguments you will hear from housing providers who do not want to be subject to tenant protection laws. They often say that the tenants they serve have special needs and are hard to house. These landlords say that the Landlord and Tenant Act is too cumbersome for them, that it takes too long for them to evict tenants they want to get rid of. They will beg you to allow them to continue to operate outside the Landlord and Tenant Act or to introduce a fast-track eviction to the act.

First, their argument is based on several dubious assumptions. How many of the 47,000 tenants who will be helped by the Lightman provisions of Bill 120 are really hard to house? Most are seniors or disabled tenants. Others are low-income tenants living in nonprofit accommodation. Are these landlords saying that seniors, disabled or poor tenants are intrinsically more difficult to deal with than other tenants?

If that's their argument, we don't buy it. We also find it odious that some non-profits are attempting to organize their tenants to oppose Bill 120 using misinformation and scare tactics.

Second, there is an assumption that these housing providers should be trusted to operate unsupervised because they are good non-profits helping vulnerable tenants. This assumption is dangerous. As the former

residents of Mount Cashel and Grandview correctional facility will tell you, there is no guarantee that charitable or even governmental organizations helping the underprivileged will always behave appropriately.

The truth is there are good non-profits and bad non-profits. Some of our members live in non-profits where they have experienced ongoing harassment, lockouts, invasion of privacy and even threatened lawsuits. This is a type of care no tenant needs. It is time to end the imbalance of power between these landlords and their tenants, not institutionalize it.

Third, because they do not operate under the Landlord and Tenant Act now, many are unaware how to use the act effectively. For most types of eviction the act is reasonably expeditious while preserving a tenant's right to due process. Court delays do occur, and we would support a recommendation to commit more resources to the courts so that cases might be processed faster.

We are also open to considering a system which prioritizes court cases so that serious ones are bumped up on the list. We do not agree with proposals to shortcircuit the process for all Ontario tenants because a handful of landlords are resisting regulation under law.

Mr Abramowicz: We are, however, sensitive to the needs of vulnerable tenants whose health and wellbeing are threatened by violent, disruptive or intimidating behaviour. We could live with an interim removal of such tenants under certain special circumstances. We expand on this topic in our written brief and set out the criteria that would have to be attached to such a removal order in the written brief that we've presented.

As a coalition which counts among its members tenants, landlords and legal advocates, we believe we are a unique deputant on Bill 120. We, as a coalition, have worked hard to understand each other's concerns and to ensure that our proposals are adequate, fair and realistic to all the parties involved in this type of housing. Consequently, we truly think that you should pay special attention to our recommendations, which represent the consensus of all the different stakeholders around this issue.

We would now be pleased to answer any questions the committee has at this time on the proposals we have put forward regarding the Lightman provisions of Bill 120.

The Chair: Thank you. In rotation, Mr Cordiano.

Mr Joseph Cordiano (Lawrence): Certainly this is quite an extensive brief, and I would like to have some time to read through it, of course, to digest some of the details, but if I may just ask a couple of questions around, firstly, the question of care and bringing that under rent regulation, if you will, rent control, I have a couple of concerns with respect to that.

Firstly, defining what care really is, I suppose, could be done, and probably will be done, if that is what results at the end of the day. But, furthermore, rent regulation or rent control officers would be the most inappropriate individuals to determine whether care was in fact being offered in the home in a proper fashion. I would be extremely concerned that those officers would be ill equipped to deal with those types of decisions.

Around the question of meals and food, my concern would be that if you regulated prices for meals, then in effect you would have a floor price, which would be a minimum amount that needed to be spent by landlords, and that minimum is, of course, a ceiling on price, but a minimum on standards. There is no guarantee under that type of arrangement, that framework, that quality would be maintained. So you would have a deteriorating situation with respect to the provision of meals because they're just meeting minimums. That's a real concern. How do you respond to that? Have you thought about that at all?

Mr Abramowicz: To try to deal with both issues, first, I don't think we're as concerned about the concept of rent control officers being the ones doing the valuation, because I think it must be kept in mind that Bill 120 only deals with the regulation of the cost component of the services.

Fortunately or unfortunately, the reality is that Bill 120 doesn't deal with the specifics of the quality of the care. Perhaps for that one would have to go back to Professor Lightman's recommendations, the other 140 recommendations he had in his proposal or in his study, and enact some of those, and some of them are being enacted.

What Bill 120 does is it specifically includes under rent control the cost of the services, and that's what rent control officers would be dealing with. They wouldn't be so much looking at the service and saying: "Is this adequate? Is it inadequate?" They would more be looking at what the cost of it is and seeing whether the charge for it is appropriate and whether an illegal charge has been attached to it.

Mr Cordiano: But, see, again that speaks to the same point around meals. Quality would end up suffering if you didn't have some measures of control around quality. If you're just dealing with the price floor, a minimum price or a set price or a ceiling, if you will, on price, then you would not have a guarantee of quality. That quality may suffer as a result, because as prices are being constrained, you have no guarantee that the quality is going to be maintained.

Mr Abramowicz: Sure. My feeling of what laws do, the Landlord and Tenant Act, rent control and many other laws, is to set a minimum standard. They don't allow people to go beyond that. What they do is to set a basic level of protection for the individuals they're attached to. That's what we hope this law will do.

The reality is that, just as now, there are different operators out there in the marketplace. There are some operators that probably try to approach the higher end of the market and some the lower end of the market. What we hope that these laws will do, and specifically the rent control provisions that you're talking about, is set a minimum standard and not allow people to engage in, say, gouging practices and not allow people to derogate from basic minimum standards.

With respect to other things, then the reality is that there are other factors that are going to have to get involved. The market is one of the issues that will be involved in determining where people go. If one place is offering better food than another place, then maybe

people will be move to the other accommodation.

The other issue, Mr Cordiano, if you're suggesting that perhaps we need further regulation to ensure that not only are the prices regulated but as well the quality of the services, including the food, I'm not sure you'll find anybody disagreeing with you in this coalition.

1050

Mr Ted Arnott (Wellington): Thank you for your brief. We appreciate your advice. You've touched on many aspects of the bill and you've touched on probably the most controversial aspect of the bill, which is, as perceived by some of the municipalities, that this bill will intrude into their legislative responsibility for zoning.

We've heard some concern about that. We've heard the minister's response, which is that this is meant and intended to legitimize an existing situation, ie, there are a lot of illegal basement apartments. This simply recognizes that there are a lot of basement apartments out there and we're just legitimizing those.

Do you anticipate, in your opinion and your experience, that this bill will increase the numbers of basement apartments in the province significantly?

Mr Abramowicz: I guess, as an opening point, what we, as a coalition, have tried to do is we've limited ourselves to deal, if at all possible, with the Lightman recommendations in Bill 120. As a coalition, we haven't spent a lot of time or developed a great deal of expertise to deal with the basement apartments. Perhaps other groups such as INC, ie, Inclusive Neighbourhoods Campaign, would be better served to respond to that.

As a coalition, our position is basically that the reality is that there are tenants living in basement apartments at this point and right now they're living in some kind of nether world with no rights. We believe that any legislation that will extend to tenants in basement apartments and, frankly, tenants in unlicensed rooming houses would be welcomed.

It's not a detailed answer, but perhaps we would let other groups respond specifically to those issues.

Mr David Johnson (Don Mills): Yesterday we had a presentation from the Ontario Residential Care Association, and my recollection is that they indicated that the average age of their clients was somewhere in the vicinity of 83 years old. One of the problems they pointed out is that the care needs change, are not constant, and as the care needs increase over a period of time some of their facilities, some of the people they're speaking for, the operators, simply don't have the level of care that would be required to give to that person.

Their concern is that if they come out of the provisions in the Landlord and Tenant Act, they would not be able to arrange for the person to move somewhere else into a facility, to an operator that has the level of care the person needs. If the person chooses, for whatever reason, to stay put, then the person is there and perhaps not receiving the kind of care. There's obviously a problem at any rate. What is your response to that situation? How do you see that situation being dealt with?

Mr Abramowicz: I guess our primary response is that we don't envision that this will be a problem in a great

number of situations. The reality is that most people want to be living in places that are appropriate to them and that, if an individual is in a situation where he or she can no longer get the services that are necessary for him or her, the vast, vast, vast majority will voluntarily choose to move to another accommodation where he or she can receive the appropriate care. Because of that, we think in some ways this is a bit of a red herring, that the reality is that for the vast majority of residents it's not an issue. They're going to go to a place where they can be best suited or best taken care of.

In certain circumstances where individuals do decide to remain behind, for whatever reason, because it's been their long-term home or for whatever reason, we believe in the principle that was enunciated in the Lightman report, that of the concept of delinking; that is, perhaps this is something that we are moving towards as a society now, to delink the concepts of housing and support services.

The situation where individuals wish to remain in their accommodation and are getting only a certain amount of care but perhaps there is a need for certain additional care, it might be possible—not “might be”; this is something that's growing in today's society—it's possible to bring in certain services to do the top-up necessary to allow individuals to remain in their housing, and perhaps that is an appropriate thing in certain circumstances.

The idea of delinking and bringing in other services is a solution to those unique cases where individuals are going to choose to remain in the accommodations that they are presently in when their service needs have gone beyond those that are available by the housing provider.

Mr Gary Wilson (Kingston and The Islands): Thank you very much for your presentation. It's certainly very detailed and, as you point out, you also have a submitted brief that we will certainly be considering and noting the areas of your concern. Certainly our intention is not to weaken the rights of anybody who is protected now; we certainly want to go beyond that.

But obviously it would be helpful, I think, to everybody on the committee if we had a better sense of what the conditions are that we are dealing with in the various types of accommodation that are being considered under the title “care home,” and I was wondering whether one of you could present perhaps some information on what the conditions are like in a care home, just to give us a more graphic sense of what we're faced with.

Mr King: I live in a non-profit housing provider in the east end which doesn't necessarily provide care but claims they provide care in order to get an exemption under the Landlord and Tenant Act. A simple explanation would be, it's like the Wild West. They can do anything they want. You have absolutely no rights. They don't even go out of their way to inform the tenants of these non-profits, these houses, that they have no rights.

In my situation, I had a cat. I had some problems with them, I questioned their authority, they changed the rules, “You can't have a cat, get out.” It applies to anything. They can tell you to do anything. They can walk in the house and say, “Go in there, clean that bathroom, or you're out,” and they do that.

Mr Gary Wilson: This is in your own unit?

Mr King: Yes. I live in a shared accommodation, boarding house type situation which is run by non-profit and they have total exemption from the Landlord and Tenant Act. They can throw people out on a minute's notice.

Mr Gary Wilson: And you've seen that happen?

Mr King: Yes, I have. They attempted to throw me out. I have a court injunction preventing them from throwing me out. They've decided they have a right to tell me who I can and can't associate with and threatened me with eviction should I have guests that they don't approve of.

They walk in unannounced. I've seen them bring police into the house and search people's rooms without their knowing. It goes on and on and on. If you stand up for your rights, you get an ongoing campaign of harassment against you. They've threatened me with lawsuits. They've tried to insert their staff members on the board of directors of a legal clinic which was representing me. It goes on and on and on.

Mr Gary Wilson: Why would anybody want to live there?

Mr King: My main purpose for living there was it was cheap housing, bottom line, no other reason. It's rent-geared-to-income housing and a shared accommodation environment. They are good houses, they're clean, they're better than a lot of the other rooming house situations you get in the city, but the fact is you have to check your rights at the door.

Mr Gary Wilson: Is there any opportunity for you to discuss these conditions with the management of the institution?

Mr King: That was my first route, when I first ran into problems, to try and work it out within the non-profit. When I ran into a brick wall, I went to the ministry and the ministry said: “Listen, we have nothing to do with it. We hold these at arm's length and if you have a problem with it, you're going to have to take them to court.” That's the only recourse you have in these situations, to take them to court, drag them through court cases, which take years, and you could be out on the street as it is. Two or three years from the time you're evicted, not too many people want to continue on with their court case.

Mr Gary Wilson: And you pretty well feel now that you are completely at their disposal as far as your privacy in your room as well as the other conditions?

Mr King: Oh, yes. They walk in unannounced several times a week and the more you object to their invading your privacy, the more they do it. They decide they're going to hold unannounced fire inspections and give you a day's notice and go into your room and then they don't even bother checking the smoke detectors in your house. It's just non-stop harassment should you question their authority.

Mr Gary Wilson: So as far as you'd be concerned you would consider the provisions under Bill 120 to be a clear improvement on that kind of a situation?

Mr King: Oh, definitely. Like I said, it's the Wild West right now. Like they say, there are vulnerable tenants living in these places, people on low income, recovering alcoholics like myself, people with disabilities. I think the best way to help these people is to empower them. You give them housing and no rights at all, you know, hold them under your thumb; that's not helping people. That's holding them hostage.

The Chair: Thank you. The committee thanks you for being here on this very cold morning to present to us.

1100

ONTARIO REAL ESTATE ASSOCIATION

The Chair: The next presentation will come from the Ontario Real Estate Association. Good morning. The committee has allocated 30 minutes for your presentation. Begin by introducing yourselves for the purposes of our electronic Hansard.

Mr Jamie Edwards: Thank you, Mr Chairman, and members of the committee. My name is Jamie Edwards and I am president of the Ontario Real Estate Association. With me this morning is Mr Ross Godsoe, first vice-president of the Ontario Real Estate Association and a realtor from Mississauga, and Mr Jim Flood, the association's director of government relations.

By way of background information, the Ontario Real Estate Association currently comprises over 40,000 real estate brokers and salespeople, organized into 48 local real estate boards, active in virtually every community in Ontario. Our mandate includes working with government to increase consumer protection through improved education and business standards for the real estate profession, enhancing the opportunity for all Ontarians to own and enjoy real estate and protecting the fundamental democratic rights of property owners in the province.

To accomplish these goals, OREA provides realtors with a vehicle to work with the government on a wide range of legislation and regulatory policy issues which affect housing and real estate. Bill 120 certainly qualifies as legislation that affects housing.

Before beginning our substantive comments, I would like to make it clear we are restricting this submission to the issue of accessory apartments and garden suites. We do not claim any expertise in the health care field or how this legislation might affect that industry.

As the committee is aware, Bill 120 is a successor to Bill 90, since withdrawn, and the consultation paper *Apartments in Houses* released by the government in 1992. OREA provided comments on both of those documents and we are pleased to be able to continue the discussion today.

Unfortunately, we do not support provincial legislation mandating accessory apartments "as of right." Our position is based on the following:

- The legislation will not increase the supply of affordable housing; in fact it may reduce it.

- The legislation will impose a province-wide solution to a perceived Toronto problem.

- The legislation is an unwarranted intrusion on local government authority.

Proponents of this bill suggest it will expand the supply of affordable housing. OREA is not convinced that this will be the case. Bill 120, in and of itself, will not provide more housing. Its most immediate effect will be to legalize existing accessory apartments, not create new ones.

As the government is well aware, there are thousands of illegal apartments in Ontario at the present time, most concentrated in the greater Toronto area. Those who created these accessory apartments did so regardless of the law. We believe it is unrealistic to suggest that there are thousands of home owners out there just waiting to create accessory apartments once they become legal. In our view, those who were interested in creating accessory apartments have long since done so. There will be no stampede to create accessory apartments if this legislation is passed.

In the longer term, it is entirely possible that currently existing accessory apartments may be taken out of supply by owners who decide that the hassles associated with the Landlord and Tenant Act, rent control, building codes, municipal inspectors bearing search warrants etc, outweigh any financial advantages.

If the goal of government policy is to increase the supply of affordable housing, there are better alternatives. For example, we support programs like the Ontario home ownership savings plan, decisions to scale back the extortionate development charges being levied by some local and regional governments, and a speeded-up land development approvals process as effective ways to lower housing costs.

In addition, it remains our belief that if the current regime of rent controls is dismantled, the supply of affordable housing will increase.

As part of our research on this issue, OREA wrote to each of our 48 local member boards to request their ideas and input. One board's response contained the following sentiment, which was echoed by a number of others:

"Once again we have an example of the provincial government implementing legislation affecting all of Ontario to deal with a problem in the Metro Toronto area. If the big cities have inadequate housing and those municipalities attack the problem this way, then let them set their regulations accordingly. Elsewhere in the province, vacancy rates are high and adequate affordable housing exists."

To us, that illustrates another problem with Bill 120. This legislation is viewed as an example of Queen's Park attempting to solve a local problem by imposing their solution on everyone in Ontario.

Local problems demand local solutions. The London and St Thomas Real Estate Board, in a letter to the editor in October 1992, expressed realtors' feelings perfectly. They said, and I quote:

"The freedom to choose how a community will be shaped and how its wellbeing is best promoted has always been the prerogative of local government. We don't dispute the authority of the provincial government to set overriding policies and goals; we do dispute their ability to design provincial policies that will work in

every community in Ontario. Indeed, this legislation is a stunning example of the provincial government's attempting to deal with a problem which exists in the Metro Toronto area—inadequate housing—by implementing legislation affecting all of Ontario, where vacancy rates are generally high and adequate affordable housing exists.”

As stated earlier, we believe the proposed legislation is an unwarranted intrusion on the traditional authority of local government. Bill 120 will overturn thousands of decisions made by local governments relating to zoning and official plans and will result in confusion and a loss of control by both local governments and local communities. As organizations such as the Association of Municipalities of Ontario have explained, this legislation will result in a rezoning of thousands of communities across Ontario. This will be done outside the normal planning and zoning process and without any local public consultation.

It is our view that when someone purchases a home they investigate very carefully the type of neighbourhood they are joining. Location is still the most important aspect of real estate.

Once an individual has decided to purchase a home in a community, he has the right to expect his neighbourhood will not be fundamentally altered without some form of due process, public consultation and community involvement. Bill 120 is a violation of the trust that people place in government, both local and provincial.

Before touching briefly on the garden suites aspects of the bill, I want to make it clear OREA supports affordable housing initiatives. We support housing intensification and we support the establishment of basement apartments. However, that support is conditional on local zoning and approvals processes being followed, including full consultation with the neighbourhoods affected.

That principle seems to be respected to a considerably greater extent with the provisions relating to garden suites. As we understand Bill 120, garden suites will be subject to municipal regulation regarding the installation, maintenance and removal of a garden suite, the term the garden suite may be permitted and arrangements regarding costs to the municipality related to a garden suite.

OREA therefore does not object to provisions relating to garden suites because their establishment will be subject to municipal agreement.

Mr Chairman, that concludes our opening statement. We would be pleased to attempt to answer any questions your committee may have.

Mr David Johnson: I'd like to thank you very much for an excellent brief, to start with, and pick up on a point towards the end of the brief where you say that once an individual has decided to purchase a home in a community, he or she has the right to expect in that neighbourhood it “will not be fundamentally altered without some form of due process, public consultation and community involvement.”

That certainly is a right that I concur with 100%. The minister seems to be of the opinion that there has been

consultation on Bill 120 and that the consultation has been adequate to implement Bill 120 and the consequences of it. I wonder what your opinion is on that.

1110

Mr Jim Flood: I don't know exactly. I don't want to put myself in the position of contradicting a minister.

Mr David Johnson: Go ahead. I would.

Mr Gary Wilson: They're not even worried when they're wrong. You know there's lots of clarification on this.

Mr David Johnson: I guess the question is, do you feel that the people who have bought homes and made a decision to buy in a single-family community have had the kind of consultation that they would concur with this kind of legislation?

Mr Flood: No, I think we'd respectfully disagree with the minister.

Mr David Johnson: Okay. Now in terms of the affordability issue, I seem to recall having discussed with your association some time ago that the affordability issue, which is one of the main concerns I guess driving this bill, in fact here in the province of Ontario is greatly improved today. I wonder if you would comment. Do you have any statistics in terms of affordability today vis-à-vis a decade ago or so?

Mr Flood: Prices have certainly decreased, as have interest rates, and the threshold for people to afford houses has been greatly reduced. There is an adequate supply of housing out there, and I think the government at all levels should encourage people to get into ownership as opposed to renting. We've seen affordability increase.

What the government needs to do is instil the confidence, and it's not a new message to anyone in this room, for people to go out and make the decision. Interest rates are lower than the 18 years that I've been in real estate, but people are still not making the decision to buy because of their fear of job loss.

Our association even introduced an insurance program where purchasers could buy insurance for job loss. We're doing everything in the private sector that we possibly can to give them the confidence to go ahead. The affordability is there; the supply is there. It's a matter of pushing people over the edge.

Mr David Johnson: Have we ever seen a period when we've seen prices this low and interest rates this low? When you combine that in a relevant sense, it's got to be a wonderful opportunity to buy and be affordable.

Mr Flood: I think the short answer is no. The last statistics I saw were released by Canada Mortgage and Housing Corp. They have an affordability index that I believe suggests housing is more affordable now than any time in the last 20 years.

Mr David Johnson: I'm not surprised. You indicate that this legislation might actually decrease the supply of affordable housing. I just think of my own municipality in terms of the many bungalows where there may be a basement apartment but where the ceiling height, for example, probably wouldn't meet current standards,

where there may be a window space that may not meet current standards and the exit may not be quite up to the standards, although we're having a tough time getting the exact standards out of the government that it's proposing.

I wonder if you were thinking in terms of a home owner there, perhaps a senior citizen, who might have somebody in a basement apartment, but is faced with the possibility—yesterday we heard that the sprinkler system, I think in a question by Mr Mammoliti, the fire chief indicated it might cost \$3,000 to \$5,000 to put a sprinkler system in one of these apartments, plus putting in an exit, plus improving the window space. Then if you had to tackle the ceiling height, you'd get into many, many thousands of dollars.

Mr Flood: I think you've illustrated the problem absolutely perfectly. In our view, I think what's going to happen is that a lot of people who have basement apartments now are going to have a building inspector in and discover that it's going to cost someplace between \$10,000 or \$15,000 to bring a basement apartment up to meet all the various municipal standards and they'll just say, "To heck with it, it's not worth the effort." That, in our view, could result in a decrease in the amount of affordable housing that's available.

Mr David Johnson: Is that \$10,000 to \$15,000 a figure you're saying could be representative?

Mr Flood: I don't know, in all honesty. Our association has not done any studies on it. Certainly if you get into issues like basement insulation and if you get into issues like sprinklers, and certainly some of the changes to the fire code that are coming can cost \$2,000, \$3,000, \$4,000, it can very easily add up to someplace between \$5,000 and \$10,000.

Mr David Johnson: What we've been hearing, yesterday I guess, particularly from the people from Mississauga, is that there should be some beefing up of the enforcement. The fire chief in Mississauga in particular expressed concern because of the death there, that the fire departments and municipalities should have stronger rights to gain entry to inspect and make sure that the fire walls, for example, are properly constructed, just the basic ingredients, maybe that the wiring is properly done and that sort of thing.

Secondly, from the municipal people, there should be permissive legislation. If municipalities are given an overall goal—and I think you've alluded to this in your brief, that the province should set overall goals or objectives, I suppose, but shouldn't try to legislate specifically. The municipalities should be allowed the flexibility to try to deal with those objectives in their own way, and one of the objectives, I guess, would be affordable housing. Is that essentially what you're saying? Maybe you could comment on both aspects: the permissiveness and the ability of the municipalities to get in and enforce.

Mr Flood: If I can start with the permissive part, there was permissive legislation, or policy, in the Land Use Planning for Housing policy statement, which said that the province set an overall goal of 25% and then allowed the municipalities to achieve that in the best way they saw fit.

We thought at the time and still think a numerical goal wasn't realistic, but setting policies and then allowing municipalities to meet goals, targets, whatever you want to call it, in a way that best suits local conditions I think is much preferable to just trying to pass a piece of legislation that says this is going to apply every place in the province regardless of what the neighbourhoods are like and regardless of what the municipalities think and regardless of how much consultation there had been with the home owners in those individual neighbourhoods.

Mr Gordon Mills (Durham East): Thank you, gentlemen, for appearing here this morning. I am very pleased to see that you agree with the so-called granny flat, because I'm here mainly to defend that. I think it's a very worthwhile part of this bill, but I see you're going to agree with that.

I want to turn to your role as the chair and members of the Ontario Real Estate Association. I see that your mandate includes "enhancing the opportunity for all Ontarians to own and enjoy real estate."

I have a daughter-in-law who's a real estate agent, and she tells me that the crux in making deals in many, many instances is the fact that there's an accessory apartment in the building. She said, "If I've listed a house and it has an accessory apartment, I'm home free to sell it," because people are looking for that to help in the financing of the mortgage, you see.

Also, before I get to ask you how you feel about this, I represent parts of Oshawa. Oshawa, as you know, is a General Motors town, and General Motors is in a state of flux, constantly laying people off etc. I held and was part of a public meeting dealing with Bill 120 in Oshawa. A number of people who came before that committee who are members of CAW Local 222 and work for General Motors were in favour of keeping their apartments in their houses and allowing apartments to be created in order that they could hang on to the house if in fact the auto industry goes downhill.

Given that sort of general scenario about the vital role that flats or whatever play in allowing people to own homes and allowing people to keep homes in tough economic times, I'm rather amazed at your opposition to this when I think, in my opinion, you should be presenting something for the rights of my daughter-in-law, who wants apartments in houses, belongs to your association, then you come here and you say you're against it.

It puzzles me, given that you say "the opportunity...to own and enjoy real estate." Surely accessory apartments are one of the components that will allow more Ontarians to own real estate and get into real estate in these tough times. I'd just like to hear what you have to say to that.

Mr Edwards: I hope Mr Mills is not suggesting that his daughter-in-law is selling homes with apartments that are not approved by the local municipality, because that's against the law.

Mr Mills: Get real. They're there.

Mr Edwards: If they are, then she's breaking the law, and that's unfortunate.

Mr Mills: Come on.

Mr Edwards: I'm very strong on this.

Mr Mills: There are 100,000 of them out there.

The Chair: Allow the presenter to answer.

Mr Edwards: It's the "as of right" we're opposed to. We cannot represent properties that are of illegal use or else we'd lose our licences, which you have control over anyway. So, Mr Mills, I would suggest that you talk to your daughter-in-law. Have your daughter-in-law call me personally, because full disclosure is what it's all about. If she's breaking the law, then those units are sold illegally and there could be recourse back to her on that.

We're not opposed to legal units, and I think what's going to happen, if this bill goes through, Mr Mills, is that those houses your daughter-in-law sold, those people who think they're going to get rent income from that, when they look at what it's going to cost to get those things up to speed, are going to be very upset.

If I extrapolate that to the new home side, even the building code that you brought in last year, which increased the basement height and the full wrap, increased the price of homes. For seven weeks most of the builders put their prices up and they sold no houses. You'll find that right from the Ontario Home Builders' Association because I talked to them on this issue. They're not in favour of this if it's going to increase the cost of houses. That goes back to what David Johnson was mentioning on affordability.

Anyway, Ross, you had a comment.

1120

Mr Ross Godsoe: I think you put it very appropriately as far as the accessory apartments in buildings. I think it could be a very local issue. With all due respect to your daughter-in-law, Mr Mills, I believe in the profession it is an arbitrary situation with respect to disclosure if it's illegal. Again, as I say, it is a local issue.

I just want to touch a little bit further on this affordability issue with respect to housing and accessory apartments in basements. I think the whole key word here is "affordable" housing, and we support that 100%. However, Jamie just alluded very briefly, and maybe I could expand upon that, to the building code, and it's actually over the building code changes. For the last two years, that has driven the cost of housing up \$8,000 to \$9,000 per housing unit in 1992 and 1993. There was absolutely nothing wrong with the housing that was being built in the 1980s, and even the 1970s for that matter.

At the same time, as a result of the development charges, which you may or may not be aware of, through the Chair—for example, the town of Oakville's increase in development charge is \$9,800 per lot effective in June 1993, which again had additional costs to housing and certainly didn't help the affordability of housing issue.

Mr David Winninger (London South): It's interesting that some of the alternatives you suggest on page 2 of your brief have already been acted on: the extension of the Ontario home ownership savings plan, which the realtors in my area were quite pleased with, and also the Minister of Municipal Affairs announcement speeding up the land development approvals process to lower costs.

I'm glad to hear that your association does favour apartments in houses. Many of our own representatives in

London do as well. One of the main problems, though, even though there's been a document around since the Liberal administration in 1989, has been land use policy for housing.

A number of municipalities have failed to act. For example, Mississauga, to my knowledge, has no legal apartments in houses. London, on the other hand, has gone a lot further, but there are vast parts of London that are still zoned single-family. Sometimes it's just because of arbitrary zoning; sometimes it's because the criteria established for apartments in houses are punitive.

The evidence we had Monday was that if apartments in houses are legalized, then the owners of those houses are more likely to convert, which kind of goes against the submission you make in your presentation. I just wanted to bring that to light and to reiterate the concern that people in my riding have around affordability.

In London the ceiling for the affordable house is \$139,500. By having affordable accommodation, and evidence is that apartments in houses are more affordable, people are better able to save up a down payment or, as my colleague from Durham said, to defray their mortgage, utility and tax costs. Do you have any response?

Mr Godsoe: Well, going back to our submission, on the bottom of page 3, I think we make it very clear that we support the establishment of basement apartments. However, I think at the same time that support is conditional upon multiple zoning and the approvals process through the local municipality. I think this is where the issue really lies.

Even relating back to what Mr Flood's comments previously were, and that was that if we took every current, existing basement apartment and brought it up to standard, if you will, then the chances are, if I was in that situation, for example, I may sit back and take a look at it, and if it was going to cost me \$10,000 to bring it up to local standards, which is where they should be, then I'd probably take a second look at it and therefore decrease the supply of affordable housing. But just in summary to your question, we have no problem with basement apartments, but they should be governed at the municipal level.

Mr Bernard Grandmaître (Ottawa East): My biggest problem with Bill 120 is the intrusion of the government in the planning process. It seems like the government has lost confidence in the local governments to make these decisions. Yet municipalities right across Ontario are being asked by the Minister of Municipal Affairs to provide them with an updated official plan every five to six years, with an updated zoning bylaw to accommodate the official plan. A lot of these official plans end up before the Ontario Municipal Board with maybe 300, 400 or 500 amendments before it becomes law. So municipalities are always three to four years behind in the updating of their zoning bylaw because it's before the Ontario Municipal Board, and you know the backlog before the Ontario Municipal Board.

I want to ask you what your thoughts are on the planning process in this province, because now we have John Sewell looking at zoning, looking at planning, looking at just about everything that goes on in this

province as far as planning, but AMO and our municipalities are not consulted. It's being done through, let's say, a referee, if we can call John Sewell a "referee."

I'll be the referee for 834 municipalities. I want your thoughts on this, because you people, as real estate agents and brokers, you're always interested in zoning and official plans, especially if you're trying to, let's say, sell a subdivision. So what are your thoughts on the planning process in Ontario? What kind of a mess is it?

Mr Edwards: This isn't really the topic we came to discuss today, and I don't think there's enough time to go through our thoughts completely.

Mr Grandmaître: Well, take it; take the time.

Mr Edwards: But I'll let Mr Flood summarize. We'll do a Reader's Digest.

Mr Flood: The Reader's Digest version is that I think the planning process in this province is just absolutely, hopelessly complex. I don't think anybody understands it any more. I think it takes years and years and years to get major developments out of a builder's or a developer's mind into a position where you can employ people actually building the thing.

Mr Sewell has spent a lot of time talking to different groups right across the province, including us and including AMO, as you know. I think his recommendations to a large part miss the mark in terms of the development process and the development approvals process. We don't think, on balance, his recommendations are really going to speed up that process to any considerable extent. To the extent that it slows down the development approvals and the planning process, it's going to hurt the cost of housing and real estate right across the province.

Mr Cordiano: Can I ask you, do you think that this law could be amended and that a compromise could be accomplished if it were possible to allow municipalities to determine where accessory apartments are located in the municipality and to allow for municipalities to inspect, to have access to these apartments to be able to do the inspections without warrants, as is now contemplated in Bill 120?

1130

Mr Flood: I think the answer is yes. I guess people like AMO would be in a better position to assess that question. Frankly, it's our sense that the ministry or the government do not appear to be too interested in negotiating that particular issue. As you know, they did have Bill 20 tabled in the Legislature and they withdrew it.

The government did have a perfect opportunity at that point to go back to groups like AMO or municipalities individually and try to negotiate a better deal perhaps than the 25% guideline that had been the law up to that point. They chose not to do that for whatever reason, so I'm working on the theory that the government is not particularly interested in negotiating the issue with municipalities.

Mr Cordiano: Would you support some amendments to that end if that were made possible in this committee?

Mr Flood: Yes.

The Chair: Thank you for appearing today. The committee will be considering your views carefully during the clause-by-clause consideration in the second week of March.

Mr Flood: Thank you for the opportunity.

Mr Gary Wilson: Mr Chairman, may I again offer the services of a member of the Housing staff on the fire issue, which again Mr Johnson raised, just to clear up any of the misunderstandings that surround that issue. Perhaps just before we rise at noon, since we started a little bit late, members would be willing to stick around to hear Rob Dowler's presentation.

The Chair: Certainly. Of course, we attempted to do that yesterday. We had unfortunately lost a few of our colleagues. I think it would be good to hear from the Ministry of Housing following the next presentation.

CITIZENS FOR CITIZENS—HAMILTON

The Chair: The next presentation is from Citizens for Citizens, Mr Beland. Good morning.

Mr David Beland: We have quite a mishmash this morning. We've heard from the social lobby, we've heard from the realtors and now you get an opportunity to hear from the neighbourhood.

Mr Gary Wilson: Good. We're all neighbours.

Mr Beland: Actually, we're going to be discussing the apartments-in-houses issue of Bill 120 as well.

Our organization, Citizens for Citizens, was formed in March 1990 to review Hamilton's draft housing intensification policy, and these are the two policy statements we actually reviewed. One of our original members actually is here today. Lois Brown is here who sat on the original committee. Our secretary, Michaelene Galan, is also with us this morning.

The committee presented a brief to the city of Hamilton to follow up the information, and this was our citizens' brief on the information. The study itself was a \$75,000 study on housing intensification, just to look at mainly the apartments-in-houses issue and some other aspects of intensification.

Our committee was involved in the whole process right from the beginning and the final outcome was the development of Hamilton's municipal policy statement which was passed by city council in 1992. We helped draft this policy. As well, we helped draft the bylaws to support that policy.

Our committee focus is on neighbourhood issues: apartments in houses, inner-city decline and housing intensification. One of the directions that we had taken was to determine if there was a link between conversion and decline in the inner city. We set an action plan to look at refocusing direction away from the rural-urban fringe, and that's the direction that development has taken today. It pushes harder and harder on that agricultural land.

Our idea is to refocus this direction back towards the inner city, and we are looking at a stabilization plan of inner-city neighbourhoods and a revitalization of the inner city. All these aspects are linked together: the use of new agricultural land, the stabilization of the inner

city, as well as rejuvenization of the inner core.

The executive of our committee is made up of two representatives from each of the six neighbourhoods across the east-central area of Hamilton, so that's about 12 or 14 members we have on our executive. We have 30 immediate resource people who help us with all our work and we have about 500 on our community mailing list who also act as a resource pool to our committee. The committee also shares information right across the city through community groups through an organization called the Executive Council of Hamilton Neighbourhoods, an organization that we also helped to form.

Our community information was developed from interviewing over 2,000 people in our east-central area, the area that was built prior to 1940 in Hamilton. We've also seized every opportunity to gain information, taking part in Hamilton's workshops on affordable housing and also the workshops on the task force for sustainable development. This of course is a major regional plan, the sustainable development plan, although just a draft copy of Hamilton-Wentworth's sustainable plan.

We continue to work with sustainable development in 1994 to implement the sustainable development plan. We have also made presentations at the Sewell commission and we've reviewed all the materials from that commission. We have also attended almost every seminar possible on housing and community issues in our area and even some outside our area.

I would like to mention that we also made a presentation at the Lightman commission since we had considerable information on care facilities and second-level lodging homes in our area. We are not making a comment on that part of the legislation today.

I have mentioned that we wanted to determine if there was a risk between conversion and inner-city decline, and we have. I am going to the brief section here on page 19.

Hamilton, like many cities, is suffering badly from inner-city decline, especially in the downtown core with vacant storefronts. As you move away from the downtown core on King Street and Barton Street, you see storefronts actually being boarded up with no hope of renting. The downtown Eaton Centre, which is similar to the Eaton Centre here in Toronto, has a whole floor of vacant space. You can imagine going down to the Eaton Centre and seeing the whole second floor vacant. Well, this is what happens when you go to Hamilton. Yet it seems that the malls on the outer ring of the city have very little vacant space, and in Dundas, which is a commercial strip just west of us, the storefronts are all full and it's a thriving community. Hamilton has the same number of people as these areas to support the downtown, yet decline continues. So we ask the question, why?

It seems that Canadian cities, and maybe right now provincial governments, have learned almost nothing from our American neighbours and are heading really on the same path of inner-city destruction. City planning has forced the middle- and upper-middle-income groups to the suburbs and has in turn forced the low-income groups very close to the inner city, right around the inner-city core, as a matter of fact.

In Hamilton, one can trace the decline of the inner city back to about the mid-1970s, when we started to see the number of converted properties increase around the inner-city core. It seems that for every middle-income family home owner who moved out, a low-income rental family has moved in. We certainly haven't anything against low-income rental families; I've been one most of my life.

The problem with this is that now 70% of the single-family homes—that's 70%—within three miles of the inner city of Hamilton have been converted. The replacement families unfortunately do not have enough disposable income to support the downtown stores, restaurants and services. So these businesses in the downtown leave and they head out to the outer core and they just leave the For Rent signs behind.

In the residential aspect of our community, speculators and absentee landlords own 90% of the converted buildings. This may be different than in other communities. We have actually heard the Minister of Housing say that older families with some extra space would create an apartment, or younger people looking to augment their mortgage payments would probably put an apartment in a house, but this has certainly not happened in the inner city of Hamilton.

What happens with the speculators and absentee landlords owning these properties is that maintenance is certainly never carried out. The owners have very little interest or no interest in their communities. They go ahead and cut down trees and tear off verandas. Just horrendous things have happened to our neighbourhoods, and we see that the direction of decline just continues.

1140

Our committee, very early after researching our information, projected in the spring of 1990 that if the same direction continued in the inner city of Hamilton with the number of conversions that we were seeing and the decline that we were seeing, total conversion and inner city breakdown would occur—I've put January here. We weren't quite that specific, actually, but we were looking at 1998 for a very, very serious problem within our inner city.

Just in the last few weeks in Hamilton, front-page stories in the Hamilton Spectator are outlining about further store closings, along with articles of inner city decline and despair.

We do have a plan of action, and I think it's really appropriate that we do, because we are in serious problems in the inner city of Hamilton. Hamilton's housing intensification policy, the policy that I alluded to a little earlier, really sets us in a direction away from this decline. The plan is to stabilize the inner-city neighbourhoods while meeting the future housing needs.

The following are two recommendations that Citizens for Citizens made which are now part of our housing plan and what we see as the key to saving our downtown core and neighbourhoods.

The first recommendation that we made was to remove the restriction on conversion to only those houses built prior to 1940. Since 1950 in the city of Hamilton, conversion has been allowed on properties that were built

before 1940, so we have had apartments in houses for 40 years or better in the city of Hamilton, in the inner city at least.

Our belief here was that in creating apartments right across the city, we could take pressure off the inner city and also it would give the other neighbourhoods some responsibility for creating housing, although you can imagine they actually didn't think much of this. We did get this approved. It took considerable lobbying, but we have this as part of our housing plan. We have apartments in houses right across the city of Hamilton presently and this was approved in 1992.

This was conditional, however, on redirecting the traditional conversion area of the inner city to these outer areas that haven't been converted. The two key aspects of our bylaws was to continue the existing bylaw of one parking space per unit, and this is a manoeuvrable parking space since we are a shift-working community. Most of the remaining properties, the 30% that are non-converted in the inner city, we found would not meet this minimum requirement and so that would be a direction towards the outer areas.

Along with that issue, though, parking—as probably you can see in our brief—is just a major cause of concern in the inner city and almost every one of the 2,000 interviews we went through brought up parking as one of their major concerns and problems. We believe we have to maintain our parking bylaws in order to create any sort of a stable community within the inner city.

The next recommendation was to continue the existing bylaw of our 700-square-foot apartments. Again, most of the 30% of the non-converted homes couldn't meet this requirement and our research found as well—it's just as important, I think, as our research found—that couples and young families would stay in a fairly good-size apartment, a 700-square-foot apartment. If it was any smaller, these people would tend to look for another apartment.

This is what we have where small illegal apartments have been created in our area, a real transient movement of people. Just a considerable amount of our information supports around this type of area, and actually the effect on the children of this moving on a continuing basis has been very devastating in our community.

With these above bylaws in place, we believe that the speculators, the people who convert these houses, will look at the thousands and thousands of houses that we have made available in the outer ring of Hamilton to convert, rather than staying in the inner city and going through the problems of adjustments, the planning and development meetings and the committee of adjustment meetings where they usually run up head to head with groups like ours.

We think that Bill 120, as it is presented, just throws the doors open to these speculators. We've sort of been running a guerilla war with them for almost two decades now and we think that they have done just incalculable damage to our inner city. We don't see that there is any benefit to throwing the doors open in the inner city because we already have 70% conversion. So there just really is no reason to take that risk.

Just under another consideration, Hamilton's housing intensification plan melds into Hamilton-Wentworth's sustainable development plan, Vision 2020. This work is unparalleled anywhere in Canada. The United Nations established the International Council for Local Environmental Initiatives, ICLEI, as a committee to evaluate communities worldwide on the basis of the quality of their living environment. In 1993, Hamilton-Wentworth was selected by the committee as the only community from Canada to join the 21 model communities around the world. This is a very important area, Hamilton-Wentworth, and the work that we have done on sustainable development in housing.

We do have a concern about Bill 120 even in the areas outside the inner city. The province seems to believe that throwing the doors open to conversion will create a great number of apartments and take the pressure off the raw land needed, the farm land. John Sewell states that cities would act like a sponge to absorb people.

This is good in theory, but in practice we have seen in the inner city that creating small apartments is directly proportional to the number of problems created, and the number of problems created again is directly proportional to the number of middle- and upper-middle-income groups that move away from that problem. This in turn puts pressure on the new agricultural land because these people never look back. They always look to the new development up front, the new development to move forward to. This again will put the pressure on the agricultural land.

I'll just go over the questions and recommendations before we open the floor. The questions we have are, if the world community accepts Hamilton-Wentworth as a model community, can the province recognize this status? Can the province recognize the uniqueness of Hamilton-Wentworth and help develop the model that we have created, rather than detract from the model with Bill 120? Our fear is, are some areas like the inner city of Hamilton expendable at the price to be paid for implementing Bill 120? Is it not better to develop and protect inner cities, to redirect the focus of attention of the middle income rather than to ensure the profits of the speculators and absentee landlords?

I do have one somewhat personal question in the line of a heritage district. I have worked eight years to develop two heritage districts right in the centre of the east-central area to add some stability to our community. The heritage districts presently restrict use to single-family use, which is the original use of the properties. What we ask is, will Bill 120 protect the heritage districts or will it once again throw the doors open to the hammers and the crowbars of the speculators?

The position of Citizens for Citizens is certainly not to avoid the concept of apartments in houses. In Hamilton I've put the first, but actually for the most part we were the only organization that recommended and supported apartments in houses right across the city.

The province, we feel, should certainly set the policies for apartments in houses. But where the objectives of this policy have been reached, such as in Hamilton's pre-1940 area, then the municipality should be allowed to control

the policies through its local bylaws so as to meet the challenges of inner-city decline. This could be done quite easily through such things as special planning areas.

If the policy is to be implemented locally and the bylaws just discarded, we look again at some type of a phasing-in program for inner cities so that we can start balancing off those communities that have a high level of conversion for those that do not.

We think to ignore the recommendations and disregard these special needs of the inner-city area would have the same irreversible negative effects which we have witnessed in North American cities in our research.

The uniqueness of Hamilton's long-standing contribution to apartments in houses and Hamilton's recognition by the international community as one of 21 model communities around the world should be considered before implementing Bill 120. Thank you, Mr Chairman.

Mr Gary Wilson: Thank you very much, Mr Beland, for your presentation. I certainly found it thought-provoking and very thorough, and I certainly appreciate the qualified support for Bill 120. I see that this is dated August 1992 and is in response to the consultation paper put out by the ministry in June 1992 and of course this very graphically shows that there was an extensive consultation over the provisions that are now in Bill 120. I'm pleased to see many of the suggestions you had then are still current now.

1150

I would like to ask you, though, a couple of things and one has to do with the absentee landlord phenomenon. You have raised some concerns about the absentee landlord and some of the characteristics that befall some properties at least. I'm just wondering whether you think there are alternatives to stipulating that a converted property must be owned or owner-operated, as it were, that the owner has to reside in the facility? Are there ways that the community can police the characteristics of the property through bylaw, for instance?

Mr Beland: That was the very first thing we looked at. We were hoping that in some way or other, we could control this situation through some type of controlling the absentee landlords. But more or less under the Charter of Rights and even though we don't have property rights entrenched in the Constitution, there's still a group of rights there that are sort of acceptable at any rate and we sort of head in that direction.

We couldn't see that there was any possibility of taking an action. Both the planning department and our committee as well as others researched this for a considerable length of time and in fact there wasn't any way of handling that situation. So we had to look at ways around the situation rather than handling it directly.

Mr Gary Wilson: Could you be a bit more specific by "that situation"? I'm thinking of noise, for instance, and unkempt yards. What are you thinking of when you talk about the circumstances that are associated with absentee landlords?

Mr Beland: What we see is for the most part you can very seldom ever get hold of an absentee landlord and they look at a bottom line. They just take the money out

of the community until there isn't any money left and then if worst comes to worst, we see the power of sale signs.

But what happens is that the municipality can't get hold of the absentee landlords and the tenants will very seldom ever complain, we have found. They'll just move to a new property rather than put in a complaint, and that certainly has been a problem that even the tenant advocacy groups have pointed out to us in the Hamilton area.

Mr Gary Wilson: With better enforcement of bylaws, mightn't that be one avenue then that there would be some result from complaining?

Mr Beland: I think the problem is that the issue is so great, we have a very large number of problem situations, and we have found that on average, working with the planning department, if we are looking at trying to clean up a bad situation, we're very lucky if we could maybe get one in every two months by the time we track the guy down and we find where he is and we send him notices and we try to help the people who are there.

It's a real laborious situation and even if we had the right-to-entry situation, we couldn't see that would really help that situation much. These people are experts in the field and we are trying to look at a broader situation to try to handle the current conditions rather than trying to focus on each individual absentee landlord.

Mr Gary Wilson: I'd like to say I appreciate your highlighting of the inner city problems that are associated with, I would say, things like unemployment; the lack of money in effect. But I was wondering, by opening up all parts of the city to conversion, is it not possible you would have the pressure on the inner city relieved by people who are able to and in fact would find it more appealing to live in other parts of the city and therefore that would free up inner-city apartments for others who would prefer to live downtown or who don't have a car, for instance, as many people who live in apartments don't have cars, so that this would mean that it would lead to a more balanced nature?

Mr Beland: We focus on very neighbourhood issues and understanding people, and right now the understanding in Hamilton is that no one wants to really live in the downtown area. So we are trying to set in motion a plan that will more or less clean up the downtown area. I don't like to use the term "clean up," but I like it to balance out a little bit.

Mr Gary Wilson: You referred to all those For Rent signs.

The Chair: Thank you, Mr Wilson.

Mr Mills: I'm next, Mike.

The Chair: My apologies, Mr Mills. Mr Cordiano.

Mr Cordiano: Of course, the government's theories are going to be blown out of the water. I just want to congratulate you for a very thoughtful, very thorough brief. Actually, it was quite devastating for government members because what you have provided us—

Mr Mills: Come on now, speak for yourself. Devastating—get real.

Mr Cordiano: It's unfortunate that the minister

wasn't here today, because she would have been enlightened by your views. I think what you've provided us here today is a snapshot or a fast-forward of what might in fact result after Bill 120 is brought into law. I think, quite frankly, you've pointed out exactly the problems that will face a city like Metropolitan Toronto.

We already see a decline in the inner city of the city of Toronto. In fact, when intensification of the magnitude that you're speaking of takes hold as a result of Bill 120, which is an unplanned, unmanaged kind of intensification which will result, it will lead to a further devastation of the inner city. The politicians in the city of Toronto are already complaining of a loss of assessment dollars, and that will further be exacerbated by, I believe, what will result as a result of Bill 120 and the intensification of it.

Mr Beland: We are really worried about our downtown core. Right now we have approximately 5,000 vacant units in the pre-1940 area of Hamilton. The people from the Mountain and from what we call the outer ring or the rural urban fringe will not move into the downtown area. Our plan is to start to stabilize these neighbourhoods, not only to stabilize them, but to have the publicity out there that they will be stabilized. We have undertaken a whole series of projects like the heritage districts and some work on redeveloping our downtown core as well, and we hope that this will start to refocus that direction away from those outer areas.

Mr Cordiano: My colleague has a point to make, but I'm just going to add this: What you're seemingly telling me is that this has resulted in the exodus of what amounted to a family setting in the inner core. That no longer exists in the inner core of Hamilton; they've removed themselves from the inner core.

Mr Beland: They've gone. The renters, for the most part, are good people. The problem is that the absentee landlords let the properties run down, and they have to move to another property, and so we get this transient situation. These are the types of stability issues that we are handling and that's why these special planning areas, such as I have outlined, or something along this line, are absolutely necessary for our inner city.

Mr Grandmaitre: I'm sure the city of Hamilton will be grateful for your group and your input and not only the time that you've put into this brief but the time you've given to the citizens of Hamilton.

The city of Hamilton, I read recently, wants to give itself a new vision, a new Hamilton—never mind the rah, rah, rah Hamilton Tiger-Cats and the Steel City; they want to give themselves a new vision. Was this the result of your group's study?

Mr Beland: We were only part of that study, and this is part of our sustainable development plan for the region of Hamilton-Wentworth with what's called our Vision 2020. Part of the sustainable development plan was based on our housing intensification plan, along with the environmental issues, the harbour remediation and quite a number of other issues as well. We are looking at refocusing a whole direction back towards the inner core, taking the pressure off that agricultural land, which I think everyone believes is very important. I know John Sewell, certainly in his reports, has. We've taken some

great action at doing some work on our harbourfront.

I can see some little signs there that maybe we're going to move forward, but I'm afraid Bill 120, as it's presented today, is just going to snap the rug out from under us in the inner cities because the people who are converting—I know them very well—are still looking at converting the inner city. They don't want to move out to that outer ring, so we have to have that redirection.

Mr David Johnson: Excellent presentation. My grandfather owned one of those lovely homes in the city of Hamilton that I suspect now is converted. You mentioned 5,000 vacant units in the city of Hamilton. What sort of rents would be charged? Are these high-rent units or affordable units, or how would you describe them?

Mr Beland: Actually, a lot of the units in Hamilton are the very affordable units that are to rent, and the reason is because we have had a lot of doubling up of people to try to meet the hard economic conditions that we have. We see a lot of rents in Hamilton at \$390 a month. I don't think you could have touched that for many, many years. These same apartments were maybe renting up to \$500 just a few years ago, so the rents have dropped back so far just to gather people.

I did hear the Minister of Housing here a little while ago saying that the rental apartments available were in the higher end, but in Hamilton actually the reverse is true. It's almost low-end apartments.

1200

Mr David Johnson: I suspect that's true in many communities, certainly here in Hamilton. From what you're saying, and I concur, if I was a speculator and I felt that the price of homes was about to go up because the interest rates are low and house prices have come down, then I would rub my hands in glee with regard to Bill 120 because this Bill 120 presents all sorts of opportunities.

Mr Beland: Exactly.

Mr David Johnson: You think the price of houses is going to go up, and now you can buy, within the law you can split it in two, get some income out of it until it goes up to where you can make a profit, sell it and have no regard for the community, or whatever. That's the kind of problem that you're concerned about.

Mr Beland: That's exactly the problem. If we can't redirect these people to the outer ring—of course there is always pressure on the inner area because that's where the services are, and the restaurants; that's where the action is. So we have to redirect them out there in order to balance those inner-city neighbourhoods.

Mr David Johnson: I see on a chart on page 7, "Statement Update," if I'm reading this correctly, that Hamilton does not permit below-grade apartments. Am I interpreting that correctly?

Mr Beland: It has to meet a height requirement, and you're going to stretch my knowledge. I think six feet, nine inches is the height requirement in Hamilton base-ments. In the older city there aren't very many of the older apartments that can meet the six-foot-nine condition. I don't want to be quoted 100% on that; I'm just going from memory.

There is also a provision that a certain percentage of the basement has to be out of the ground; the windows have to have so much light coming in, in other words. I can't exactly tell you what that is, somewhere around three feet, but it has to have some light coming into the window. That also provides an access for escape as well.

Mr David Johnson: Okay. But under Bill 120, those restrictions—

Mr Beland: They would be removed.

Mr David Johnson: They would be removed, so that would presumably cause some problems there.

Mr Beland: Our apartments, for the most part, are not basement apartments in Hamilton. We're almost all second-floor or third-floor apartments.

Mr David Johnson: Yes. You've got many of the bigger homes, the older homes. The 700-square-foot restriction, could you tell us how you came upon that?

Mr Beland: We talked to a great many people. We found that the tenancy in the east-central area of Hamilton was down to six months, that people were moving every six months. We started to say, there's got to be a problem here, because there was a real pressure put on our schools and even our recreation centres to come up with programs to maintain children in those programs.

When we started to talk to people, when we started averaging out some sizes a little bit, we could see that if we had about—actually, it was over 700 square feet that we came up with, but our bylaw said 700 so we didn't want to make any changes to it. We found that people would stay in apartments that were that size. Even up-and-coming young couples like a little bit of room to entertain and what not, and they would stay in an apartment that was a little bit larger.

But once you got too small, under 700 square feet, the pressure was on for people to find a little bit bigger accommodation, and that's what we were finding. People were moving in, saying "This will do for now, but then just as soon as we find another apartment we'll move." This is the type of thing that goes on just continuously. Don't come to Hamilton on the first of the month or you can't go down the side streets for the moving trucks. It's incredible.

Mr David Johnson: Mr Arnott has a question.

The Chair: He may.

Mr Arnott: No, I don't.

The Chair: Thank you very much for your presentation. We appreciate that. As I've told other groups, we will be considering this piece of legislation during the week of March 6 in clause-by-clause examination.

I believe, Mr Wilson, that you were hoping to have the ministry at this point clarify a matter?

Mr Gary Wilson: Yes. Rob Dowler from the Housing ministry.

Mr Rob Dowler: I'll be quite brief in my description of the process that gave rise to the draft fire marshal regulations which Mr Hare referred to yesterday.

Originally, when the Bill 90 consultation paper came forward, this document here in 1992, the last chapter in

that document did contain draft fire code regulations, or rather draft regulations which pertained to matters concerning fire safety. That was circulated quite widely among municipalities, enforcement officials, general citizens, ratepayer groups and other folks across the province.

The single biggest concern we heard in regard to fire safety was from enforcement officials, and the view that was expressed most often was that the provisions that affect fire should generally be included in the fire code, as opposed to in a proposed regulation made under the Planning Act. In response to that concern, we contacted the office of the fire marshal and we worked very closely with it to convene a task force in the first and second quarters of 1993, last year.

The task force, as Mr Hare indicated, consisted of fire and building officials, landlords, enforcement officials, tenants, individual representatives with an interest in the area of fire safety and fire protection engineers. That group came up with the draft standard which is proposed to be made under part 6 of the Ontario fire code, and that draft standard, I believe, was circulated by Mr Hare yesterday. I'm sorry, it was part 9 of the Ontario fire code that it would be proposed to be put under.

The draft standard addresses many of the issues that the committee has heard about in the last few days from the people who appeared before it, issues such as notification and the proper installation of smoke detectors; issues such as containment of fire, fire separations and the extent to which a fire can be confined to one dwelling unit; and issues such as exiting and the provision of a single or multiple paths of exit in the event of a fire.

The draft provisions generally conform to the existing provisions in the 1993 amendment to the Ontario Building Code which pertain to apartments in houses. As our minister indicated in her Monday presentation, those building code provisions are now law. They were issued in the summer of 1993. The intent, which I believe was expressed in our staff presentation on Monday and in my minister's remarks, is to make the regulations under the Ontario fire code law at the time Bill 120 becomes law.

These two initiatives do very much go hand in glove with one another. They were consulted on together in the initial document which was circulated as part of Bill 90. I think it is the government's intention, as expressed on Monday, to bring these two initiatives together in law at the same time.

As I indicated in a comment that I made on Monday to the committee, it would be very difficult for us to proclaim the draft fire code regulations, which I think there's quite a bit of support for, in advance of Bill 120. The reason is that if the fire departments were to make orders under the draft fire code regulations, the municipality would be placed in an awkward position, because it would have to issue building permits to clear work orders for properties which do not conform, in most cases, to municipal zoning.

If the property is not a permitted use under municipal zoning, the chief building official would be compelled to issue the building permit, but I think we all agree that it would be very awkward for the building official to issue

a building permit for a property that he knows does not meet zoning, does not meet applicable law, to use the language of his legislation.

It is our view that it's very important that Bill 120 and the fire code regulations go ahead at the same time. I think it's also our view that those standards should address many of the concerns that were raised before the committee in previous days.

Mr Hans Daigeler (Nepean): I think this is quite important, what we're hearing here. I just don't know whether we perhaps can continue this in the afternoon. If there is a cancellation, perhaps we could have some debate on this, because my question still is, since you are obviously stressing that those two things go together, are we going to get an opportunity to see it?

Mr Dowler: As I indicated, the draft standard is in the public domain and we could certainly make it available to this committee. It is a matter which is still under discussion, however. It is a draft standard.

Mr Daigeler: I just refer to what the Minister of Transportation did in my area, which was helpful. He put before the committee the draft regulations for the graduated licensing system. At least he gave us an idea of what was being discussed. I think the more that you can share with the committee in terms of the regulations that you're planning to put together, the more helpful it's going to be.

Mr Gary Wilson: They wouldn't be any different, would they, from what Chief Hare circulated yesterday?

Mr Dowler: To be quite honest, I haven't read what Mr Hare did circulate. We could make a current copy of the draft, emphasizing again that these are draft and that there are some matters that our building code officials are discussing with the office of the fire marshal. If the committee is willing to look at them as a draft document, that's acceptable.

The Chair: You are to make that available to the committee then.

Mr Dowler: Yes.

1210

Mr David Johnson: Specifically, there was a question of the right of entry. Can you tell us what these new regulations are going to say with regard to the right of entry of the fire department into houses, into basement apartments and into accessory units?

Mr Dowler: The existing provisions in the Ontario Fire Marshals Act contained in subsection 18(1) would continue to stand. Those provisions in 18(1) and in a subsequent section under that act do give the fire department fairly broad powers of entry, at least relative to other acts that I'm aware of in the province, such as the Rent Control Act and the Building Code Act.

There is a specific provision made under the Fire Marshals Act for fire officials to gain entry without a search warrant in situations where the official does believe there's a threat of fire or of imminent danger to life. We could make those sections available to the committee as well, if that's helpful.

Mr David Johnson: Sure, we would like to see both,

but I think there's a general consensus from the fire chiefs that what is there today is inadequate and certainly, from my experience, first, it's inadequate to get in, because what is the fire inspector going to do, get in a row with the home owner? The home owner says, "No, you can't come in." What are you going to do? Break down the door? Bring the police. Force entry. They can't get in. It's pretty clear today.

Second, if they do get in, there is a difference of opinion as to what powers they actually have when they get in. There are many who feel they're restricted to looking simply for fire violations in the sense that is there a proper extinguisher, are there piles of oily rags or things like that.

If there are other infractions, building infractions, possibly property standards infractions, maybe even infractions to do with the hydro, they have very limited powers and they're really not able to act in that capacity, their scope of power is very narrow. It doesn't really come to grips with all the problems they may be able to see. Do the new regulations address this concern?

Mr Dowler: I think it's important here to separate issues that relate to questions of authority and what's actually in the provincial statute from matters of local practice and what the enforcement official may be comfortable with. I think you heard from Chief Hare yesterday on the latter types of issues.

On issues of authority, which is really all I can speak to as a provincial official, I think you can see in the statute fairly clear provisions that are made whereby a fire marshal, deputy fire marshal or district deputy fire marshal may take any person that he or she deems necessary into the inspected premises to assist with the inspection. That could include, I believe, a property standards officer, or I think there is in fact a specific provision made here where a police officer could be brought in if there is a real difficulty gaining entry.

Again, what's written in the statute, what I would want to convey to the committee, is a fairly broad provision for powers of entry for fire officials. You have indicated that some officials have different levels of comfort as to how far they want to go with this authority. I think some of those issues were described yesterday, but the statutory powers for fire officials are quite broad.

Mr David Johnson: You mention exit requirements. What specifically will the new regulations say with regard to exit requirements and basement apartments? Will each basement apartment have to have an outside exit that doesn't go through the main dwelling?

Mr Dowler: No, the draft standards refer to four exiting conditions. In cases where a unit does not exit directly to an outside portion of the premises, there would have to be additional provisions made for fire separation and notification. If there is an exit available directly from the unit to the outside, the separation requirements and the notification requirements would be slightly lower than if that were not the case.

The Chair: I was just going to suggest that if we're going to ask specific questions, it might be wise to wait for the draft regulations to actually be in front of us

before we pursue that line. Given the fact that we're by adjournment time and I'm losing many members to other appointments, perhaps we could restrict the conversation a little bit. I have two other members still on the list, and we may have only two members left if we continue this way. So, Mr Grandmaître.

Mr Grandmaître: No, I'm going to wait for the written report.

The Chair: What about Mr Wilson?

Mr Gary Wilson: Definitely. I'll get a rain check on that.

Mr Grandmaître: Maybe I should add that whenever there are major changes or amendments to the building code or the fire code, it puts a lot of pressure on municipal inspectors, plumbing and electricity and the fire chief and his prevention group, because there's always the zealous inspector who will walk into your brand-new place, it's only a year old, but with the new fire code, he will want to change all these great new inventions. That's my concern about these major changes. I think they should be done very gradually.

The Chair: Thank you. Gradually we're losing all our members. I would remind the committee that at 2 o'clock we will reconvene. It is helpful to the Chair to have representatives of all three parties here so we can begin on time, given the fact that we have a very difficult afternoon in terms of scheduling.

The committee recessed from 1218 to 1403.

INCLUSIVE NEIGHBOURHOODS CAMPAIGN

The Chair: Our first presentation for this afternoon's hearings is from the Inclusive Neighbourhoods Campaign.

Ms Fiona Stewart: Good afternoon. My name is Fiona Stewart and I'm a member of the campaign. Next to me is Ann Fitzpatrick, and next to Ann is Francisco Rico-Martinez. I will be beginning with some comments about our support and looking at four cornerstones of the bill. Ann will be making some key recommendations on some improvements to the bill, and we will all be available after the deputation for questions.

The Inclusive Neighbourhoods Campaign is a coalition of 138 groups across Ontario that support changes to the Planning Act to allow apartments in houses "as of right." Collectively, these supporting organizations have day-to-day experience with thousands of low-income tenants across Ontario who live in illegally zoned apartments in houses. In addition, many home owners have supported our goals.

Today we are limiting our comments to the apartments-in-houses portion of the bill. Our coalition also supports the other portion of the bill; however, we will not be discussing it today. Our comments cover two main areas: firstly, the four cornerstones of support for the bill, and secondly, key recommendations.

The first cornerstone of support, housing as a right: It is the role of all governments to develop a vision and appropriate laws to uphold rights and protections of all citizens, including the most disadvantaged. The province takes the abstract concept that housing is a right and through Bill 120 protects these rights by overriding the discriminatory restrictions that are pervasive in cities and

towns across Ontario. It is the appropriate and necessary role of the government to be a steward of human rights if these rights are not upheld at the local level.

It is unfortunate that the province has had to intervene at this point in history, but it is necessary and it is extremely urgent. Decades of devolving planning regulations, including giving extensive power to municipalities, have resulted in an abject neglect of some people's fundamental human rights. Municipal planning regulations, bylaws and zoning continue to restrict legal apartments in most areas in Ontario. Too often, municipal planning rationales masquerade as an objective, neutral process. This is a coverup of the main agenda: to maintain exclusive or "snob" zoning designed to keep out certain types of people, including, but not limited to, low-income tenants.

Historically, the effect of maintaining exclusive single-family designations has been to legitimize a form of segregation by income and effective segregation by race, family status, gender and age. This form of planning simply ignores the human rights of many of the most disadvantaged tenants in our province.

The principle underlying the bill says no to discrimination in zoning, no to the walls built around residential communities where only those who can pay for a down payment and make mortgage payments have the privilege of choice, no to keeping out low-income tenants and other diverse groups. The principles underlying Bill 120 say yes to inclusive communities that are planned for all people, not just higher-income groups.

This bill is an important intervention in an area of planning where municipalities have historically failed to take a proactive approach to ensure housing and human rights. Bill 120 brings Ontario closer to upholding the Ontario Human Rights Code.

Our next cornerstone is equality for tenants. The bill brings equity and fairness to apartment tenants. These tenants are invisible citizens presently. They live in these units often without basic knowledge that they are even living in an illegal unit in a house. They have become second-class citizens in this province.

This bill makes it clear that these tenants have coverage under the Landlord and Tenant Act and the Rent Control Act. All tenants deserve to know their rights, and these rights should not be applied like a lottery: Maybe they'll be covered, maybe they won't. This is certainly the case for apartment dwellers in houses in Ontario presently.

Bill 120's underlying principles speak to the right of all tenants to a basic living standard, including tenants in houses. The province is making provisions for fire and building code standards and reinforcing municipal obligations to support property standards. This is long-overdue provincial intervention in the lives of tenants who have been neglected and who have been in fear to report abuses of standards.

Our third point is equality for home owners. INC receives frequent calls from home owners who want the right to put a second unit in their home safely and legally. Sometimes it is for an aging parent. Other times

it is to help pay for a mortgage to keep their homes in these hard economic times. By making one apartment in a house a right across Ontario, the government is allowing every home owner the same rights. This also protects some home owners from being harassed and fined in one area while another is allowed to convert an apartment. Examples of home owners who have faced large fines even while this bill is debated have been shared with the Inclusive Neighbourhoods Campaign.

It is our position that allowing apartments in houses makes sense for many people and is good planning. Historically, apartments in houses have been used as part of the housing stock. Why such opposition to sanctioning a solution that 100,000 home owners have acted upon, with or without legal zoning? Why not sanction the choice of home owners to convert part of their under-utilized home for tenant use?

Good planning starts at the human scale. Bill 120 provides a framework to facilitate, not dictate, flexible housing solutions. It allows flexibility as households age, get smaller and experience changing economic circumstances, and as housing stock becomes underused. It opens up options for many diverse groups: for house-poor seniors who have too much space and not enough income, for single parents who don't want to live in a high-rise accommodation, for small families who want their children to have a backyard to play in, for new Canadians who want to live in houses but who can only afford to rent.

1410

Good planning reflects environmental issues and concerns. Better use of housing stock and prevention of urban and suburban sprawl can be supported by legalizing apartments in houses. Municipalities have not always been the best stewards of our green space and limited land. Municipalities seem to be saying, in their singular opposition to Bill 120, that good planning is acquainted with zero-growth plans for so-called stable, single-family-zoned residential areas. Apartments or rental housing are only supported in selected areas or in some cases on a main-street plan. This is despite the demographic shifts that show in many single-family areas a decrease in the population in suburban neighbourhoods. This shrinking in household size in established communities is what is putting the very stability of these areas at risk, as many people fear, not apartments in houses.

How can small neighbourhoods stay vital and support local infrastructure, businesses and healthy community life? Some suburbs are becoming like ghost towns, with very few people coming and going during the day and evening. Municipalities try to argue that apartments in houses are bad planning and point to issues such as parking to defend this case. They point to a shortage of services and lack of infrastructure. This becomes a quite circular argument.

First of all, planning as a discipline is not and never has been a perfect predictor of social and economic needs and realities. Demographic shifts and new realities often are not planned for adequately even when the information is available. Our current housing situation is a perfect example, where we have many small households needing

rental housing at a time when many municipalities have actually encouraged the development of monster homes.

It is critical that apartments in houses not be blamed for some of the shortfalls in planning as a whole. Apartments in houses make good planning sense. They have been used very inappropriately as the scapegoat for many existing local problems. It is time to accept them and plan for their safe and secure future existence.

I will now turn the discussion over to Ann Fitzpatrick, who will be discussing the key recommendations.

Ms Ann Fitzpatrick: We will be providing a very detailed brief on some complete recommendations, and I'm only going to be touching on a few. We'll also be supplying you with our detailed brief on the consultation that was held in the summer of 1992 on apartments in houses, as well as a detailed report on an inquiry on safe apartments in houses that we held last June with input from many groups.

Bill 120 is a first step and it's definitely a step in the right direction around apartments in houses. However, we would like to have you consider some amendments and changes to enhance human rights and planning and tenant rights.

The first thing that we'd like to say is that we don't think that limiting one apartment per house as of right should be limited to one unit. We think that the as-of-right provision around additional units in houses should be more open and inclusive as long as these units can meet fire and local property standards as they're developed.

We see this as a halfway measure and another form of exclusionary zoning. Clearly, if municipalities establish minimum unit sizes, as set out in the building code, this could prevent home owners making several closet-size and very inappropriate apartments. However, as you know, in many communities with older housing stock and large housing, they could very reasonably accommodate two or three apartments.

Secondly, it's critical for us that the regulations and the law of Bill 120 as it relates to apartments in houses be retroactive. Consultation on this government's intent to legalize apartments in houses dates back to the throne speech in 1992. Further than that, the Liberal government, in its housing policy statement in 1989, was indicating that it wanted municipalities to look favourably at this form of housing.

In the meantime, while we consult, debate and discuss, tenants are getting evicted, home owners are getting fined and dismantling perfectly good units that are in violation of zoning. The courts have not recognized this pending legislation in a number of cases that we're aware of. We say it's time to get the word out that this is going to be law and that people need protection.

Thirdly, we would like the province to provide educational resources to assist home owners and tenants to understand the obligations and rights under key legislation such as the Landlord and Tenant Act, the Rent Control Act and the Ontario Human Rights Code. This is key, because this form of housing has been illegal and has been in existence for 10 years. Many home owners

don't understand what the rights and obligations are, and indeed many tenants don't even realize.

We also recommend that home owners who are getting permits to convert be provided with some useful and optional information that they may make their second units accessible. It is much cheaper to develop accessible units at the point of conversion than it would be at a later time when they may want a senior relative to live in that unit.

We also believe that the province should be providing some low-interest loans or funds to assist with conversions to accommodate accessibility or improve safety standards, targeted at some home owners with low incomes.

The next set of recommendations we have relate to strengthening some tenant rights. We feel that the Rent Control Act, and specifically the rent registry, needs to be expanded to include these single units. Currently, the rent registry only covers buildings of units of four or more. We think that this is very important.

Another protection for tenants we'd like strengthened is the eviction time for owners who want the apartment back for their own use. We recognize the rights of home owners to have the unit back for their own use, but we would like this time period extended to 120 days to give tenants adequate time to find alternative housing. We also fear that this provision could be used as a loophole to evict certain tenants where other grounds may not be present.

We cannot state strongly enough how we oppose the greater rights of entry that municipalities have been pushing for. Bill 120 will be overriding the local zoning, which specifically is what puts tenants in fear of coming forward to voluntarily invite inspectors in. We are hearing from tenants that it's the zoning that's the impediment. They don't need warrants and people coming into their unit. They would be more than willing to invite them in to bring their apartments up to grade.

Our final points relate to what we think is the importance, because of chronic municipal opposition to these units, of the province monitoring the implementation of Bill 120 and some specific suggestions on how we believe municipalities should be exercising enforcement powers so that property standards on tenants in apartments are exercised as fairly as with tenants in other units. We certainly support safe and decent housing, and we would hope that municipal intent would be similar to other apartments, ie, the intent to maintain that housing stock, assist landlords in upgrading it however possible and preventing the eviction of those tenants through the loss of tenure wherever possible.

Our fear, quite frankly, is that enforcement at the municipal level will be very heavy-handed and will be motivated with the intent to close down units even if there's one minor violation.

Finally, we recommend that this bill leave an opening in the regulations for later provincial changes and amendments to establish fair minimum standards for apartments. We say this in the event that local municipalities fail to set any reasonable minimum standards regarding ceiling

height and unit size etc. The province has set some maximum-minimum regulations to ensure that Cadillac-type provisions aren't established in municipalities, but we're a little concerned around minimum standards. There is a precedent for this kind of fail-safe mechanism in the Rent Control Act, where municipalities that have no property standards regulation fall into the provisions under that act, and we ask that you look at that as an example.

In conclusion, we think that this issue has been documented in planning studies for decades. I myself and many of the members of our coalition have made deputations before mayors in the Toronto area and across this province. We believe that it's time to move on this bill now and certainly consider some of the amendments that we've suggested. Thank you.

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The Chair: We will start with Mr Daigeler and then Mr Grandmaître. Try to be relatively short: three to four minutes.

Mr Daigeler: A rather quick question then, although the answer may be long. I understand your concern and where you're coming from. However, in view of the position that you have taken, I'm wondering what role you would still give to local government. I think in the approach you have taken, you obviously give a lot of importance to the provincial government, but traditionally we have had three levels of government in this country. I'm just wondering whether in your view there is a function still for local government, and if so, what that would be.

Ms Fitzpatrick: We think local government has a very important role and we regret that on the issue of apartments in houses it has been neglected at the municipal level for so long, to the point that it requires provincial intervention. We think the role of municipalities is to recognize this housing, to develop some minimum standards and to enforce safety in those units. We think there's an important role at the municipal level, definitely. What we've seen is that municipalities have turned their eyes to these units, allowed them to exist, ignored the rights of the tenants who live there and accepted a huge housing stock across Ontario of tenants who are like invisible, second-class tenants.

What we're saying in terms of the provincial role is that we don't think the municipalities have behaved responsibly to date around these tenants and their needs and the needs of home owners. We're asking the province simply to watch, because with the 1989 housing policy statement, as you're all aware, most municipalities didn't comply with even responding to those statements. So we're basically saying, "Please take up your role as municipalities and meet the housing needs of all your citizens, not just people who can afford to buy a home."

Mr Daigeler: Obviously the role that you're giving to the municipalities is as the enforcer of the provincial rules. Of course, our local governments don't accept that kind of description. They see their role very much as a planning function as well, determining themselves at the local level what the future of the local level should be. It shouldn't be just dictated to by the provincial govern-

ment. Obviously there's a different vision of what local government should be.

Mr David Johnson: I just wonder how it is you feel that municipalities get away with being so irresponsible and so negligent. They go to the electorate every three years, they're elected by all the people and people seem to vote them back in.

We had the city of Hamilton here this morning which does have a policy in support of accessory units. They've had many accessory units in that city for quite a number of years. I might add that they've indicated they have some 5,000 vacant units, which they described as being very affordable. We had the mayor of the city of London yesterday. The city of London for some time has been quite at the forefront of pursuing the affordability issue. The mayor of Oshawa was here yesterday indicating that a high percentage of the units there are affordable. But still, they're apparently irresponsible. I just wonder, how do they get away with it in view of the fact that this is a democratic society and everybody has a vote? If they're so irresponsible, why do people vote them back in?

Ms Fitzpatrick: I think it's a fairly complex issue. There's been a lot of confusion in this province about the legalization of apartments. Many people create apartments in their homes not even realizing they're breaking a law until a building inspector comes and closes their apartment down. So they're voting sometimes without full knowledge of exactly what issues they're voting for.

In my recollection of local municipal politics, at least in the greater Metro area, I don't ever remember basement apartments being on anyone's political agenda. I think politicians have tried to keep the issue quite repressed. The reality now is, and we all know this, that there are over 100,000 units in this province. The municipalities are being dreadfully neglectful of them. It's quite obvious that if there are 100,000 of these units, people want them. They are absolutely necessary in towns like London, in towns like Kingston, in any university town. Those towns could not survive without apartments in houses because of their student population.

Additionally, I think that it's just been such a long time that they have behaved so irresponsibly, it's time to give the power back to the province. They've had a chance. This issue has been an issue for a long—since the planning of the 1950s. That's how far we're going back.

Mr David Johnson: What happened to power to the people, basic people—

Ms Fitzpatrick: Which people?

Ms Stewart: What people?

Mr David Johnson: People who vote in a municipal election, people who vote in any election.

Mr Francisco Rico-Martinez: That is a good point. Which people are you talking about? For instance, talking about visible minorities, we have our rights to stand by and we have the right to the choice of where to live and we don't have a choice sometimes.

For instance yesterday, during the deputation about London, I was saying that that city for me doesn't exist. I have friends there and they have a different point of view and a different view about London itself and about

services, about planning, about needs, about different things. So maybe we are talking about two different cities, one city for the visible minorities, immigrants and newcomers and other kinds of low-income people, and you are talking about another city for people who can afford some kind of accommodation and can afford to buy a house.

That is the thing that we have to stop. We have to have one city for each single person and we have to fight for equity, and equity for everybody, not just for the people who can afford to buy a house.

Mr Gary Wilson: Thank you very much for your powerful presentation. My colleague George Mammoliti has a question. So I would like just very briefly, first of all, to say thanks for putting the lie to an observation that Mr Johnson has made in the past that this is only a Toronto problem and that we've come up with a province-wide solution. You've clearly shown that it's a problem that exists across the province.

But the question I'd like you to just briefly respond to is, is owner occupancy a requirement? Would you want to see that in the legislation, and if not, why?

Ms Stewart: I don't think it's necessary in the legislation. When I hear about people talking about speculation and absentee landlords, it's been my experience that the sorts of people who want to invest in basement apartments and apartments in houses have a vested interest in keeping those apartments in good shape when they're doing a resale.

When it comes to this whole issue of speculation, as a former committee member of the Fair Tax Commission's committee on land speculation, I believe it was our good friends the Conservatives who told us that there was obviously absolutely no need for land speculation because speculation didn't even exist. So that would be the line I would carry there.

Mr George Mammoliti (Yorkview): The point about the municipal governments I agree with completely. As a matter of fact, Mel Lastman and his famous "Nobody" quote I don't think has anything to do with Bad Boy and the store. I think it has everything to do with this particular piece of legislation and how many people he wants to see living in basement apartments.

But nevertheless, I want to touch on an area that I feel strongly about, and that is how the ethnic community feels on this. I note in the sheets that you've given us that there are a number of different ethnic groups that support you and support this piece of legislation. I want you to be very specific in terms of why this legislation is being supported by most ethnic community groups, and the difference for some of those ethnic groups between living in a home or living in an apartment building, because that is an issue. If you can be very specific on this, I'd appreciate it.

The feedback I get back in my community is that of course family means a lot to a lot of the ethnic groups, that in a lot of cases a family might buy a home and might want some relatives renting the basement and in a lot of cases it has everything to do with child care, it has everything to do with the things that you responded to

earlier to the member for the Conservatives and it has a lot to do with visible minorities and family, in my opinion. Respond very directly, please, on what this does for the ethnic community.

Mr Rico-Martinez: Talking about our cultural background, for most of our people we're talking about ethnospecific communities that are newcomers, if you want. We don't have these kinds of discussions about legal or illegal apartments in our countries. If you are lucky you have a place to live, and that's it. So when you come here you don't have this idea to choose if the apartment is legal or not. So you go and you start to live anywhere because you are pushing to find a place to live, especially with this weather. You have to find a place to live, and after two months you become aware this apartment is illegal and you are there without language, without the knowledge about the community, without any kind of information and it's another barrier for newcomers in order to access the Canadian society.

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Ms Fitzpatrick: If I could just add—

The Chair: Thank you.

Mr Mammoliti: Oh, you did it, you did it.

The Chair: One moment.

Mr Mammoliti: Go ahead.

Ms Fitzpatrick: I was just going to say that we've heard from various communities various reasons why they want the choice to have access to residential communities when they don't have the income, and it's very true that some communities, like the Tamil community in the Metro area, have told us that they like to live with extended family, but they also like some privacy issues. Obviously, within health and safety standards, perhaps the whole family could rent an entire house right now and that would not be in contravention of zoning, but they may want a separate unit in the basement for the extended family member, so there are various reasons.

Also adding to the point around newcomers, new Canadians, and what they're aware of in terms of their rights, some of them have come from countries where they have been persecuted and so forth by governments and by authority figures and this puts another layer of fear knowing that they're breaking a municipal zoning law by their housing, and I think it's quite frightening. They're desperate so they will accept some pretty awful standards without complaining.

The Chair: Thank you for appearing today. The committee will be considering this bill commencing in March, clause-by-clause review.

FAIR RENTAL POLICY ORGANIZATION OF ONTARIO

The Chair: The next presentation will be made from the Fair Rental Policy Organization. The material has been distributed to all members. Good afternoon.

Mr Philip Dewan: Good afternoon. First of all, just an introduction: I am Philip Dewan, the president of the Fair Rental Policy Organization. With me is John Rozema, who is a director of our organization and a landlord based in Sarnia, Ontario, who also has interest in the long-term care sector.

FRPO, as I think most of the committee members probably know, is the largest landlord organization in the province. We represent individual and corporate residential landlords, property managers and associated firms, ranging from the individual owning one or two units to large corporate landlords with many thousands of units. Our mandate is primarily to lobby on their behalf and represent them in discussions about provincial regulation, focusing on rent control but obviously encompassing any issue which touches on the rental housing sector.

We don't represent basement apartment owners, for the most part, and there's only a very small minority of our people who have interests in the long-term care sector, so we haven't really given Bill 120 the same degree of scrutiny that we would Bill 121 or some of the other issues that we've appeared before you on. We don't intend to make any particular comment today about the basement apartment issue. Just for a change of pace, we're not going to talk about basement apartments at all for the simple reason that we don't have a position on it. A lot of our members obviously see basement apartments as competition in a market out there that's already very competitive. On the other hand, I think we do support any measure that would provide the supply, and certainly a lot of supply has been provided over recent years by accessory apartments. Whether or not the municipalities' concerns about standards and ability of enforcement and so on are reasonable, I'll let them make their case. We're going to keep our comments to the extension of rent controls to the long-term care sector.

However, we do want to say at the beginning that we do have some real concerns about the process involved here and the fact that these two issues have been lumped together in the first place. It's certainly not the norm that we look at a piece of legislation that encompasses two very distinct and separate issues and tries to put them before the Legislature and the people as one piece. We certainly don't think this is in the best interests of an enlightened public debate to have it carried forth this way.

That being said, we'll go on and talk a bit about the extension of rent controls to long-term care facilities. A lot of the specific details that were presented to you yesterday by the Ontario Residential Care Association, and I'm sure by other groups which will come forward over the next little while, provide far more detail in terms of the specifics of the bill than we want to get into today.

Basically, our major message is that we have not found, as people have been working under the Rent Control Act since August 1992, either flexibility or even capability within the system to deal with the areas that are already regulated, never mind facing any additional burdens at this time. We think if there is going to be an attempt made to bring in a whole new sector, such as long-term care, which involves a wide range of different responsibilities not faced by your normal residential landlord, ie providing individual medical or social service-related attention to their customers, that there should be very little faith that the system can handle it, based on what we've seen so far.

There are lots of examples we could give you of some

of the problems that are already occurring even within those areas that have traditionally been covered by the rent control legislation, both in the Rent Control Act and in the prior legislation. It took months and months of uncertainty and sort of legal wrangling within the ministry to even sort out the situation with regard to suite hotels, which is a very small example in a situation that ostensibly had been covered by the act for quite some time. Yet there were situations where individual owners of hotels were being told that units that were rented out for any long-term stay within that hotel were going to come under the Rent Control Act, even though that clearly was not the policy intended when it was passed.

A much bigger example probably is with mobile home parks, which are specifically included in the legislation. All of the provisions that were drafted in terms of capital requirements and operating costs and so on within the Rent Control Act as a whole were clearly intended for your normal residential apartment. Yet those rules are being stretched in some way to encompass mobile home parks without recognizing the vast differences that exist there, the fact that these places are required to establish infrastructure, much like a small village or municipality in the province, a whole road system, sewer system, water-pumping systems and so on. It's quite a different situation than the normal apartment. There's been no flexibility again within the system to try and recognize those sorts of differences. None of this bodes very well for the ability of either the act or the people who administer it to be able to adjust to the realities and provide the flexibility needed to take into account the special requirements in the long-term care sector.

There's another difficulty that we look at if realistically we're facing another change in the Rent Control Act within the foreseeable future, and that is that we have now been over a year and a half since the Legislature passed Bill 121; the government still does not yet have the capacity to even adequately administer what it's already approved, never mind bring something else into play. We've been asking since August 1992, when the bill was proclaimed, to receive copies of the rent control manuals that are provided to the rent offices, which are supposed to give them direction on how they administer the act, how to make a rent determination given a particular set of circumstances.

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The first of those manuals finally started coming out a number of months ago and they dealt with very elementary issues, operating the computer system at the ministry and so on. The most fundamental guidelines of all, the rent determination manuals, are still not available. So a year and a half after the law has been in effect they haven't yet figured out how to advise their own staff on administering the current act. So again, it doesn't give any great comfort in terms of their ability to bring into the system a whole range of new operations which, as I said, cover responsibilities not faced by the normal residential landlord.

For all of the reasons that we've stated and that ORCA and others have stated at much greater length, we believe it's unwise to proceed with Bill 120 the way it is and that

there should be specific legislation to govern the long-term sector. Some of our people may find that in fact a bit strange. They think if they're saddled with rent controls we shouldn't show a great deal of sympathy to anybody else who's brought into the same situation, but there's not a lot to be gained by taking that sort of attitude. We'd like to make sure that everyone in the province suffers as little as possible.

Recognizing that the government appears determined to go ahead with this, though, there are a couple of recommendations we would make, if Bill 120 is going to be amended, to try and make it as practical as possible.

The first group of recommendations, I guess, relate to a number of issues that we believe should be clarified before the bill is passed or proclaimed, or at least those sections of the bill relating to long-term care are proclaimed. First, we'd like to see a full review of all of the relevant legislation—the Rent Control Act, the Landlord and Tenant Act, the Rental Housing Protection Act—to identify problems that are specific to the long-term care sector, since those acts were drafted without any consideration that this type of situation was to be encompassed. So it's not just a matter of looking at Bill 120; you have to go back to the source acts and look at those areas as well. We believe a report on those issues should be brought back to either this committee or a relevant legislative body to allow some public comment and let those issues be ironed out.

We also believe that the proclamation should be delayed until the committee's recommendations coming out of that report have been not only made but actually implemented so that we don't face the sort of delays we've had in the system since the RCA was implemented or when Bill 51 was implemented a number of years ago.

Finally, there should be a training manual for rent officers concerning the application of the act to the specific concerns of the long-term care sector that is produced and circulated before proclamation so everyone knows what the rules are and on what basis the adjudications are going to be made and that it's all clear and up front.

The last point we'd make is that it's likely that most rent officers in the province are rarely going to see a case brought before them that involves long-term care facilities. There is not that large a number of these operations in comparison to the 1.2 million rental units in the province, which presents a very real dilemma in that you have sporadic cases scattered around for which each rent officer in essence is going to have to train himself anew as they arise and try to become familiar with the specific issues and concerns of that sector.

We think if the government is proceeding on this front, it may want to look at having a small cadre of rent officers who are given special training with regard to the application to the long-term care sector and that they would hear all cases anywhere in the province arising with regard to that sector so that we at least have some body of expertise built up and that some people have additional training in this area rather than leaving it to whichever rent officer happens to be assigned.

Those are our general comments. I'd like to let John

make a couple of specific comments about his experience since he's operated directly in the sector and can talk about some of the human side of it.

Mr John Rozema: First of all, we like to keep flexibility in the system. Under the Rent Control Act it states that 24-hours' notice must be given to enter an apartment. I hope that all people don't take that seriously, because now if somebody doesn't show up for lunch, for instance, they call that apartment and if there is no answer, they go up and knock on the door. If there is no answer, they will use a master key and enter. It has happened that somebody was found in distress, had fallen or something like that, and couldn't even answer the emergency system.

So there are many ways that flexibility has to be entered; it should remain in there, as there is now.

Another area is where the need for care increases. Somebody might come back from hospital, so instead of having the basic package of meals and housekeeping and so on, he needs additional care. Maybe there's bathing or something. Well, you can't very well give 90 days' notice. In the meantime, the problem might be gone or even the resident might be gone. It's just not workable in that case.

Another general kind of point I'd like to make: This is quite a different environment, really, from apartments, where I think rent control was brought in mainly because of the shortage of apartments. In retirement facilities, there is quite a surplus, really. I think every one has a vacancy.

The way it works, you've got to be very good to keep your facility at all filled up. It's a fairly small community that you work in. The care givers in a certain city or area know each other, and if a certain facility doesn't do a good job or for some reason the people who are there are not happy, that's spread pretty quickly and you're done; you can't survive in that business.

After all this being said, though, I still think there is a need for regulation of that industry. Because like in any profession, there is a very small percentage who do not act professionally. But to put it under this housing act, I think it just creates a lot of problems, not only for us as operators but for the government and for the enforcement agencies to do it.

The Chair: Thank you. We'll start the rotation with the Conservatives. Mr Johnson, five minutes.

Mr David Johnson: These are a few of the concerns that we have heard. For example, the Ontario long-term residential care association has expressed the concern that you just mentioned with regard to the needs of a client changing, for example, and a higher level of care than may be available in that particular facility.

There was a deputation this morning, I think, from the Coalition for Protection of Roomers and Rental Housing that said that kind of situation hardly ever arises and that the bill should go ahead, notwithstanding that particular concern, because that concern doesn't happen often enough to worry about. I wonder what your response would be to that.

Mr Rozema: Oh, it often happens where somebody

for some reason—it may just be a matter of the flu or something like that—all of a sudden needs much more assistance than normally. It may only last for a week or two where, for instance, they need assistance with bathing or with dressing, whereas normally they don't. So we want to be able to respond to that, and we often do. But if it looks a little bit more long term, then the family or the people themselves want to make arrangements for additional care that they're paying for.

Mr David Johnson: In a situation like that, if this was implemented and 90 days were required, or whatever, how would you deal with it? What would happen?

Mr Rozema: Perhaps all the rates would have to go up to build in a cushion or something like that. I don't know.

Mr David Johnson: The concern that was mentioned at first, and I think it's part of one of your recommendations, is that in terms of the long-term care facilities there's perhaps the basic rent side, but there's the care side as well. While I guess the operators aren't probably totally enthralled with controls on the rent, the main problem seems to be the care and who would have the expertise to know how the care should be controlled. If you're looking at rent control officers—now, your suggestion is that there be a few who would be trained.

Do you honestly think that could work? These are people who are basically associated with a housing background. It seems to be a fish out of water, in a sense. It's completely outside of their jurisdiction and their background to understand the care giving that your facilities are involved with.

Another suggestion is to put that into another ministry. Of course, another suggestion is to legislate the rent side but not the care side, just leave it out of the whole formula. Where is your position on that?

Mr Rozema: I certainly support Phil's comment that it would be better to deal with some knowledgeable rent officers than with people who just don't know the area at all. That could create chaos.

We are dealing with vulnerable people, but they're not alone. There's a whole system of care givers in every community who gets to know about them. So there is, if no moral obligation on an operator to be very professional and have high standards, certainly there's a financial need there too because of the very competitive system that we work under.

Mr David Johnson: In terms of what's paid for the service that you give, from your view is it easy to separate the basic rent from the care?

Mr Rozema: I don't know. We've been struggling with that. I guess you just have to arbitrarily kind of split it up and say, "This is accommodation; this is care."

Then the problem would arise if you split it up and then, say, there is a bedsitting room that is large enough for a couple. A couple moves in; then how do you do it? You have to divide it up separately again.

I tried to understand Bill 120 on that aspect, but Phil and I together, actually, we couldn't quite figure out how that works.

The Chair: Thank you, Mr Johnson. My apologies, Mr Arnott, but Mr Winninger has the floor, and his colleague Mr Mills would like an opportunity.

1450

Mr Winninger: This is partly a response and partly a question, I guess. Yesterday you may have been here when Dr Lightman indicated why he felt it was justifiable to link these two bills together in Bill 120. What he suggested was that we're extending protections under the Landlord and Tenant Act, the Rent Control Act and the Rental Housing Protection Act not only to residents of unlicensed retirement and boarding homes but also to tenants of apartments in houses and that's why the two flow well together.

I was reflecting on a time before I was elected in 1990 when I used to represent a lot of tenants and tenant associations before rent review panels and the courts. At that time I frequently ran into your former president, Julius Melnitzer, before he underwent a sudden change in career and went to his reward where ironically he pays no rent. But at that time, he was defending landlords that were seeking annual increases in rent of 20% and 30% and 40% and 50% a year. There was a cry from the tenants for us to change the Residential Rent Regulation Act so this would no longer be possible. Hence, the Rent Control Act which limits increases to statutory guidelines plus 3%.

It seems to me that even though there may be a few bugs in the system that remain to be ironed out, we've dealt with the problem of affordable housing in so far as it affects legal apartments. The problem is, though, we have many municipalities, as you know, that have dragged their heels when it comes to allowing conversion. If we simply delay things for all these further studies, I'm wondering first of all what we do with all the illegal apartment dwellers, and secondly, I'm wondering what about all the tenants we've heard from during these hearings who have or know people who have undergone green garbage bag evictions overnight and seen their rent and care charges soar overnight. What do we do to protect those people?

Mr Dewan: I guess I would say that we've suggested all along that these two issues should be severed. There's nothing to prevent you from going ahead on the aspects of Bill 120 related to accessory apartments if you can develop some consensus there. We haven't really been addressing those concerns, the issues raised by the municipalities and others about standards and so on.

What we are suggesting here is that the extension to long-term care is a separate issue that deserves a lot more consideration and that there are very different needs for these groups that are not reflected in the Rent Control Act. It was never drafted to cover these situations, nor was the Landlord and Tenant Act, and before you leap into extending to a group without really having given it that sort of scrutiny, there should be some time to sit back and see how you do that and how you apply the definitions. What you do on the accessory apartments issue is another front that we're not really concerned with at the moment, quite frankly.

Mr Winninger: My colleague has a question as well.

Mr Gary Wilson: I'd like to go back to this issue of the care as opposed to the accommodation cost of the total bill and just how that is regulated. As you know, it is delinked in the approach we're taking in the legislation, so the accommodation cost is different from the care cost, simply to provide some flexibility in the differences in care cost to reflect the needs of the person receiving the care. I'm not quite sure from your interchange with Mr Johnson whether that was clear. You seem to be suggesting there's some kind of 90-day period that you have to warn the client there's a change in fee. Right?

Mr Rozema: That's how I understand it, yes.

Mr Gary Wilson: Oh, okay. Because that is not the way it works. You don't have to have that as far as the change of cost.

Mr Dewan: Right. I think even with nothing on the care side being encompassed other than registering the component, whatever the dollar amount there, there are still going to be concerns raised: first of all, where that goes from here, but also just the notices that go out to tenants in terms of what their care levels are.

How do you put this diplomatically? We've seen enormous problems over both the previous and the current legislation with the rent registry and simply taking what everyone thought was a very straightforward calculation of determining what rents were for an apartment at a given level and registering them province-wide. The glitches are still in the system and you're getting notices going out to tenants which are getting a lot of people stirred up because they're being informed that there are illegal rents in their building, and then when they go forward and actually investigate the circumstances, it's a difference of two cents and it was an error that the ministry made because they weren't supposed to do that. When you start sending out that kind of information to individuals in a care type of situation, you can cause a great deal of angst.

The Chair: Thank you, Mr Wilson. I have Mr Cordiano, or—I have Mr Grandmaitre.

Mr Grandmaitre: Am I ever glad he's missing. Thank you, Mr Chair.

The Chair: Hansard will record that.

Mr Grandmaitre: Yes.

More and more people are blaming municipal, provincial and federal governments for their lack of transparency. They want open government, they want legislation that's understandable and applicable and they want to make it clear to everybody that the government is not out to make your life or our lives miserable.

You did talk about the dangers of omnibus legislation, and this is what this bill is all about. I'm surprised that in 1994 we introduce such legislation to make it more complicated to understand rent control, the Landlord and Tenant Act and so on and so forth. This bill will only confuse people. Never mind the accessory apartments and the basement apartments. Half an hour ago people were saying municipal governments are responsible, not the provincial government but the municipal governments, for their lack—or maybe their stringency as far as municipal bylaws.

You've had experience at the municipal and provincial levels; more at the provincial level. What are your thoughts on this bill especially, Bill 120, and omnibus legislation? Are we making it more difficult for our people to understand provincial legislation? Never mind municipal bylaws; talk about provincial legislation.

Mr Dewan: Certainly from our perspective this is a big step backwards. If you're trying to make the public policy process accessible to people and open to the public by taking an approach, a tactic, really for political reasons of trying to dilute the criticisms on one side by throwing one issue in with another, it certainly doesn't foster an open dialogue with the public or allow them a real opportunity to get into the issues.

I think if the government wanted to go ahead on these two fronts, and clearly they have a commitment to do that, everyone would have been better served by carrying on with the piece of legislation which they'd already introduced on accessory apartments and introducing a separate bill on the issue of long-term care and letting the relevant groups go to those different hearings. We might well be at one of them and not at the other, and some of the other people in the room vice versa.

Mr Gary Wilson: It's about residents' rights, though.

Mr Dewan: Lots of things are about residents' rights. I mean, we could put the fire code in here if we want to.

Mr Grandmaitre: I want an answer to my question.

Mr Dewan: There are lots of ways to protect tenants if you want to stretch it as far as possible, but you've got to be realistic in trying to look at what we are debating here.

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Mr Grandmaitre: This type of legislation is a lawyer's delight. Everybody will be in court. You know how it works: If you speak to six lawyers, they'll give you six different interpretations of the law. So it's going to be a court's delight and lawyers will be making money.

You didn't address the basement apartments dilemma, but you compared this to competition because—

Mr Dewan: No. I think what I said was that some of our members would be concerned about competition at a time when the market is competitive out there, right now, but the fact is that most of these units are there. They're already competing with them. There are 100,000 or whatever of them around, according to the estimates.

In general, as an organization, we support efforts to increase rental supply, but I could make a pretty good argument that this will decrease supply or it will increase supply, depending which side you want to believe on how people are going to be affected out there. Quite honestly, I don't know what the answer is overall, so we have not taken a position on this.

We certainly do favour measures to increase rental supply, and not just building high-rise apartments. Certainly, accessory apartments can be an important source. But it's not at all clear from the comments coming from all sides that the government has really come up with an answer that is going to do that and may not in fact do the opposite.

The Chair: Thank you for appearing this afternoon.

PEEL CONSULTATION COMMITTEE

The Chair: The next presentation will be from the Peel Consultation Committee. Good afternoon. You've been allocated one half-hour by the committee for your presentation. We always enjoy at least some opportunity to discuss your presentation with you during that 30 minutes. You may begin by introducing yourself and your position within your organization for the purposes of our Hansard recording.

Mr Keith Ward: Thank you, Mr Chairman, and we'll certainly try to oblige in terms of leaving you time for questions. My name is Keith Ward. I'm the acting commissioner of housing with the region of Peel. John Marshall is the commissioner of planning and development with the city of Brampton. Carl Brawley is a planner with the city of Brampton planning and development department. Ron Miller is representing the commissioner of planning and development for the city of Mississauga. We also have with us Ms Cathy Saunders from the Brampton planning department.

I'd like to thank the committee for the opportunity to appear. Just so you know where we're coming from, Peel staff and the staff from our three area municipalities, Brampton, Caledon and Mississauga, have been getting together to discuss residential intensification issues since the Land Use Planning for Housing policy statement was proclaimed. Because we had that group in place, we were able to develop some comments on the former Bill 90 and we have done so as well with Bill 120.

What we are presenting here is a collective position which emphasizes certain key points. Each of the area municipalities will also be submitting individual positions separately, and you'll probably be seeing some of the faces beside me at the presentations from those municipalities. We will leave behind a copy of a written position paper on Bill 120 so your clerks can distribute that to you subsequently. All we can do here in 15 minutes or so is to try to summarize our position for you.

First, we should make it very clear that the region of Peel and its area municipalities object fundamentally to the imposition of the accessory apartment aspect of this bill. We also object to the rushed way in which these hearings have been handled. I won't use the rather unparliamentary language of our council members when we had to talk to them yesterday and push this through them so that we could get some endorsement from them before coming to you, but they certainly made the strong point that if we in municipalities tried to handle our meetings like this, we would be in a lot of trouble.

All three area municipalities were well advanced in implementing the Land Use Planning for Housing policy statement. That statement called upon us to identify areas and conditions under which various forms of intensification would be permitted. We feel we've been undercut in those efforts by Bill 90 and by Bill 120, so we've had to retrench. We're not able to do some of the progressive things we were actively looking at and we've been forced to try and figure out what Bill 120 means to us and hold the status quo.

We would also point out that the legislation, in our view, contrasts with the directions recommended by the Sewell commission, which municipalities have generally supported and which provincial staff has generally supported in terms of the province establishing policy directions and leaving it to the municipality to implement. This legislation effectively gets into detailed land use regulation, in our view. It overrides our core planning functions. We have responsibility to project and to develop hard and soft services for our residents.

Provincial staff appears to be sanguine about the take-up of conversions under this legislation. We're not so sanguine. At a minimum, we think there will be uneven distribution of accessory apartments, which will complicate our planning of services. We point out that within Peel and a number of municipalities there are some unique concerns in that there are combinations of serviced to unserved areas within a given municipality which will force the concentration of accessory apartments into the serviced areas. In our case, that's Bolton within the community of Caledon, and that's certainly going to have an impact upon its services.

We believe this legislation is going to create problems for municipalities. We think that because the legislation is a provincial creation, it's incumbent upon the province to prove there won't be any problems and to give us the tools to deal with any problems that might arise. We're not being given those tools adequately.

We believe the legislation will not avert unfortunate incidents. We know you've heard about the fire fatalities in Mississauga repeatedly already. We would challenge the province to show in practice, not just the theory of the legislation but in practice, step by step, that we're wrong, that we can avert those things through this legislation.

I'm now going to turn it over to Ron Miller who will address a couple of issues.

Mr Ron Miller: With respect to the implementation of Bill 120, provincial staff has indicated that public meetings will be required for official plan and zoning bylaw amendments. At the same time, there will be limited discretion on the part of the municipalities with respect to regulatory standards such as parking and unit size.

Within this context, we are concerned that public meetings will essentially be a farce. The public will be presented with a fait accompli, leading to a great deal of frustration and confrontation on the part of the residents of municipalities. This will ultimately be a costly exercise. We recommend, therefore, that Bill 120, which already amends or is intended to amend the Planning Act, waive any requirements for public meetings intended to implement the provisions of the bill.

With respect to inspections, under this legislation inspections will occur largely on the basis of complaints. That's because there are no other controls proposed such as registration or licensing. Most tenants will not complain because they have no knowledge of the provisions of the fire code or the building code. On the other hand, owners will not come forward because of inspection fees, any costly renovations required to bring the unit up to

standard and a possible loss of the unit itself. As a result, most accessory apartments will not be subject to appropriate legal standards.

We are concerned with respect to the whole issue of right of entry, that it may be difficult to provide evidence to justify the issuance of a search warrant. We have requested that guidelines from the province be issued to municipalities to assist in obtaining warrants and in prosecutions.

One final note on this issue is that there is a conflict between the Building Code Act and the Planning Act. Under the Planning Act, inspectors are required to advise occupants that right of entry may be refused. However, under the Building Code Act, such a warning is not required. As a result, there's an internal conflict between the two acts which we think should be rationalized.

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Mr Keith Ward: John Marshall will cover the next few points.

Mr John Marshall: The first point I'd like to cover relates to development charges. Throughout the consultation process, the province has resisted municipal requests that the Development Charges Act be applied to accessory apartments.

As you're aware, each unit in a municipality creates capital costs for recreation facilities, fire stations, transit roads etc. In Brampton, for each new apartment unit constructed, the development charge would be \$4,700. If no development charges can be applied to accessory apartments, the cost will have to be borne by other new units; that is, the occupancy per unit, because there's an accessory apartment there, will increase. Therefore, the charges will have to reflect that. The simple impact of that is that it will hamper affordability of housing, since that's passed on to the home buyer, and undermine an already hurting home building industry.

The second point I'd like to make relates to municipal resources and liabilities for implementing accessory apartment provisions. We feel that by legalizing accessory apartments we'll put great pressure on municipal inspection services. Owners bringing their units up to code for insurance or mortgage purposes, or protected tenants putting pressure on them to do so, will create a very much increased demand for municipal inspection services. Basically, the costs are being downloaded on the municipality to regulate these units. We feel that the province should provide inspection and legal services directly or provide financial support for them.

The third point I'd like to cover relates to town housing and particularly the parking related thereto. In municipal zoning bylaws, the normal requirement for parking spaces is two spaces per unit. There's no overnight parking on streets in Brampton. Therefore, parking generated by a town house unit and an accessory apartment would have to be accommodated on the site.

The statistics we have indicate that there are 1.98 cars per town house unit in Brampton. Therefore, the two spaces per unit just cover what is generated by the owners of a town house unit. Each additional accessory apartment would amount to over one space per unit: 1.14

spaces per unit. Clearly, the parking situation will not work in town house areas. You add visitor parking to the mix and basically chaos is going to result in these town house areas. As a matter of fact, the main source of complaint that we have related to accessory apartments is related to parking and the chaos it creates on local residential streets.

Mr Miller: Continuing with the issue of regulations, we believe there is a large potential for disaster in implementing Bill 120 if regulations do not control some of its undesirable impacts. We first suggest that a task force be created to develop regulations and that task force be comprised of all affected parties, such as planning, building, legal and fire officials from the municipalities; lenders and insurance industry representatives because they also have a stake in the process; as well as home builders, renovators, landlords and tenants themselves.

In implementing these regulations, to avoid confusion, we would request that the municipalities be allowed to use their own definitions of detached, semidetached and town houses, simply because it would be very difficult to merge the provincial legislation with our own zoning bylaws.

Mr Marshall has already touched upon the issue of parking. We would request at least one additional parking space for the accessory unit. As well, municipalities should not be compelled to permit on-street parking, tandem parking or the loss of the front yard for parking purposes.

Finally, the absolute minimum size applied to all accessory apartments should increase slightly with the number of bedrooms.

We haven't touched much on the issue of garden suites. The permissive nature of the legislation regarding garden suites is largely welcome, although we have a few concerns and suggestions on how it can be improved. The advice of our legal department is that the enforceability of the agreements under the legislation is questionable, and the provincial staff have been unable to provide to it sufficient legal comfort.

The definition of "garden suite" in the legislation refers to a unit which is portable. This will permit a mobile home as well as a trailer to be used for a garden suite. The legislation should be amended to ensure that the garden suites will meet the technical standards envisioned for such a unit. Finally, garden suites should not be considered as a detached unit within the legislation, otherwise the legislation will permit an accessory unit within it, thereby resulting in the creation of four units within a building lot.

Mr Keith Ward: All of our points so far have dealt with the carryover from Bill 90, and obviously we'd had some time to consider Bill 90 previously. Because we haven't had much time in dealing with the amendments on the residential rights aspects of this legislation, we've been forced to focus on the basics of that part of the legislation.

We are concerned about the supply impact of the care home resident protection provisions. Our bottom line essentially, if you will, is that you've now extended

protection under three separate pieces of legislation to these facilities. We are fairly convinced that this will mean the death of new supply within this sector unless that supply is fairly heavily subsidized. You will discourage any kind of private or voluntary supply within the care home industry, and that certainly has to be a concern for the providers.

I would say that position has been developed in consultation not just with us as municipal staff but through our work ourselves with a number of people who are in the service business. They're saying they are worried about this legislation, and they are concerned that maybe it doesn't make any sense for them to try to create a new group home and things like that.

The Landlord and Tenant Act provisions, for instance, provide a very blunt instrument in the exemptions which are defined. We certainly would call for some refinement of those exemptions. As you know, the bill calls for exemptions on the basis of specified other acts. If you're covered under Correctional Services, you're okay, and if you're not, if you've got another act that sponsors the program, then you're exempt.

What we're saying is that there has to be a lot more refined approach taken in specifying those objections, and that refinement should be developed in consultation with the various service agencies and so forth, so that there's a recognition not of the legislation but of the actual living arrangements that exist in those properties. For instance, in a congregate living arrangement, one might want to act against a problem tenant in a different way than one would act against a tenant where the tenant has their own unit, a self-contained unit, but those arrangements could be sponsored under precisely the same legislation. So to handle them in the same way doesn't make any sense.

We also think there should be distinct provisions for quick eviction in care homes, so there's an additional measure that we're looking for in the Landlord and Tenant Act. Again, that input is coming from service providers directly. They're very concerned about the implications of this legislation for the successful maintenance of their care.

The Rental Housing Protection Act is of particular concern to us as municipalities because of course we administer that act, unlike the Rent Control Act and the Landlord and Tenant Act. Its extension does raise a number of problems. We don't believe the information will be available, unlike the rental market generally, to allow us to focus on a very narrow segment of the market and to screen applications for conversions or demolitions or whatever within that particular segment of the market. So we have some difficulty seeing how the administration of the Rental Housing Protection Act will work on the ground.

We also believe this will be the nail in the coffin. If a potential care provider thinks he might get around the Landlord and Tenant Act and the Rent Control Act and be able to cope with those provisions, the Rental Housing Protection Act says, "Once you're in, you can't get out." That's the bottom line. The obvious answer for somebody who's a little bit nervous about this is not to get in in the first place. So for both administrative reasons and for

supply reasons, we recommend quite simply that the Rental Housing Protection Act be deleted from the bill.

That concludes our presentation. We'd be happy to answer any questions.

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Mr Mills: Thank you, gentlemen, for coming here this afternoon. There are a couple of points I want to raise with you. In 1989, the previous government issued the Land Use Planning for Housing policy statement. Among other things, they said that municipalities should amend their official plans and zoning bylaws to allow one or more accessory apartments as of right. This was in 1989. My first question is, what have your collective municipalities done as far as amending bylaws and changing zoning to permit this is concerned? In other words, how many legal apartments have you got in your region at this time?

Mr Marshall: I'd like to respond to that. The city of Brampton recognized the problem in the late 1980s. We had a number of local conferences dealing with this entire issue. It was our intent to deal proactively with it through our official plan, through an analysis of our situation and allow accessory apartments in areas that could sustain them, where the built form could absorb accessory apartments in municipal facilities.

We were looking for changes in the legislation in three areas: in terms of licensing accessory apartments; inspection, allowing zoning inspection to occur at municipal discretion; and changes to the assessment legislation so that additional apartments could be assessed to reflect the cost that they bring to bear on the municipality.

We brought papers to this government asking for changes in that legislation. We met with Mr Hampton and outlined how we wanted to proactively deal with the situation. We heard nothing. There was no movement at all. Now we have legislation coming down on us that just takes the power out of our hands and legalizes them. That's what's really frustrating to municipalities. The policy statement that was passed under the previous government had the greatest intentions. We were on track to go along with it. But we need some power to deal with the problems that we're held accountable for by our residents. There was no movement at all to give municipalities those powers to regulate this problem.

Mr Mills: So to date you haven't done anything about it, nothing.

Mr Marshall: The only thing we have done is that in the Springdale community of Brampton we are allowing accessory apartments in new homes; that is, a convertible home where, as part of the secondary plan, which is an official plan document, we are allowing, as of right, two units within a building. They are specifically designed to accommodate accessory apartments.

Mr Mills: I could go on, but I want to ask another question about mobile homes.

The Vice-Chair (Mr Hans Daigeler): That will be the final question.

Mr Mills: It'll be my final question. I'm very interested in granny flats. I've got a funny cartoon here. I'll show you. It says, "Granny flats—there goes the neigh-

bourhood." There are grannies on a motorbike.

Anyway, you say you feel that "portable" could mean trailers and goodness knows what, all those nasty things. I wonder if you've considered that section 34 of the Planning Act will give the municipalities complete authority to regulate the type of construction. So to suggest may put it mildly—

Interjection.

Mr Mills: Yes. Trailers and that are not on. The municipality is going to have the authority to say it's got to be of a standard for a garden suite.

Mr Keith Ward: The Ministry of Housing staff has taken a similar position and that may be true. We're not totally satisfied that this is the case. As Mr Miller said, there's some concern about the enforceability of some of those agreements as well.

Certainly, if it's spelled out clearly in the legislation, and we can't see any possible harm in spelling it out that way, then it makes it absolutely clear to everybody. If a municipality wants to accept the trailers, that's quite a different story, but we don't want there to be any suggestion that there's a compulsion to accept trailers, and that's not the intent.

Mr Mills: I wouldn't like to think we're going to have mobile trailers all over the place.

The Vice-Chair: We'll be moving on to the Liberal caucus and may I remind everybody there are about three minutes per caucus.

Mr Grandmaître: Let's talk about accessory apartments and basement apartments, the illegal type of apartments that exist at the present time.

It seems that municipal governments have been wanting more power, as indicated by my friend Mr Mills, but they weren't given this power, the right to inspect, to go in and do a building inspection. You pointed out—I forget your name—that there was a difference between having access to these apartments or any apartments under the building code inspectors and also the—

Mr Miller: The Planning Act.

Mr Grandmaître: The Planning Act. Can you explain that difference to me?

Mr Miller: It's an internal conflict in that under the Planning Act, an inspector must advise the occupant that right of entry may be refused.

Mr Grandmaître: And he may need a warrant.

Mr Miller: And therefore a warrant would be required.

Mr Grandmaître: Very good.

Mr Miller: For an inspection under the Building Code Act, the inspector is not obligated to give the occupant that warning. It's simply a matter of a conflict between the two acts that needs to be rationalized.

Mr Grandmaître: But a municipal building inspector can't have this easy access that you just mentioned.

Mr Miller: It would depend on which act he's doing his inspection under.

Mr Grandmaître: Let's say plumbing, electrical. You wouldn't have this free access.

Mr Miller: That's correct.

Mr Grandmaître: You would still need a warrant.

Mr Miller: Yes.

Mr Grandmaître: This is what municipal governments have been asking for since the 1989 legislation and this is what this government hasn't given, that kind of power. Most of these illegal apartments were built without the knowledge of the municipal government, without even a building permit.

Now we will be asking municipalities to identify these illegal and legal apartments. As you mentioned, this is a provincial creation. Now they're giving municipalities the right and the power to have some access and to declare these apartments legal. From now on they are legal, but most of them cannot qualify under the building code and the fire code and so on and so forth.

Mr Gary Wilson: You don't know with them.

Mr Grandmaître: Yes, well, your minister said it. The minister said most of these apartments are illegal. What will happen to these tenants? That's my question, Mr Chair. I fooled you.

Mr Keith Ward: I don't think we can answer that. In some cases, there'd be a political decision. As Mr Miller said in his presentation, we can't get in and inspect everything anyway. We're still only going to do it on the basis of complaints, so it will probably be the nature of the complaint that will determine to some extent the resolution, but we are concerned about our liabilities. If we do inspect and find that there's a problem in the property, we don't have the resources to keep chasing it down and making sure that there's some remediation of the problem. We're very leery about our ability to respond properly in those situations.

1530

Mr David Johnson: It brings back memories, actually. I can recall being before people named David Peterson, Chaviva Hošek and I think John Eakins back before 1989, indicating that municipalities need the tools to deal with the safety issues and the basement apartments. Yet we still don't have them today, or at least you still don't have them today, I guess I should say, and in this bill, we still don't see them today.

I think you're being a little modest when you're asked what you have done. From my experience, municipalities have put a great deal of effort into the issue of affordability and intensification, and I think you've rightfully, certainly in Brampton, described that you have come forward with a plan, but a plan that requires certain cooperation from the province of Ontario and the province of Ontario has not responded to that. That's the case, I can tell you, in East York; we did the same thing. My suspicion is that across the province of Ontario that in fact is the case.

If the issue here is of affordability of accommodation—and I don't know, I'm just asking this question without knowing the answer, so maybe I'll be surprised—my guess is the affordability issue today, considering the cost of houses has come down, the mortgage rates are low, considering vacancy rates are coming up in many municipalities and we're hearing that rents in some cases

are actually going down, is as good as it's been in a decade or two. I wonder what you're seeing.

Mr Keith Ward: Affordability has certainly improved, both on the rental market and on the ownership market, but yet there is a problem on the demand side in that a number of people of course have a deteriorated income situation from what they used to have, as well. If, for instance, you look at waiting lists, they're going through the roof. So it's a bit of a dichotomous situation in that you've got a lot of people who are better off but you have a growing segment who are worse off than they have been.

Mr David Johnson: In my last minute or two, I think the issue that you raised with regard to the parking sort of points out that this is an issue that differs from municipality to municipality, and in Brampton you indicated that in the town houses it was 1.98 cars per unit.

Mr Marshall: That's correct.

Mr David Johnson: Plus the accessory units, another 1.14.

Mr Marshall: That's right.

Mr David Johnson: That would be considerably different, I suspect, in downtown Toronto.

Mr Marshall: Yes, it is. I have the statistics here.

Mr David Johnson: You can give me the statistics as well, but doesn't that highlight the fact that municipalities are different and that when you're taking into account planning and you're taking into account something like this, municipalities need some flexibility to deal with these issues because they're facing different circumstances and different problems?

Mr Marshall: Certainly our zoning bylaws would be designed to reflect our per unit car generation. The other statistic, Metro Toronto, instead of 1.98 for a town house unit, it would be 1.49; considerably lower because of the transit, more intensive development. For apartments it's 0.80 cars per unit versus 1.14. Therefore, I would expect Metro or certain parts of Metro would have significantly lower standards than ours and would be able to absorb the accessory units easier than a suburban municipality like Brampton.

Mr David Johnson: That's why municipalities need to have different powers to deal with local circumstances in different ways.

Mr Marshall: I agree.

The Vice-Chair: Thank you very much for your presentation. We appreciate you appearing before the committee. As you know, all of these comments hopefully will be taken into account, and I'm sure you'll follow the developments with interest.

ONTARIO COALITION OF SENIOR CITIZENS' ORGANIZATIONS

The Vice-Chair: The next presenters are the Ontario Coalition of Senior Citizens' Organizations, Morris Jesion, executive director.

Mrs Beatrice Levis: Thank you very much for the opportunity, although it's unfortunate timing that it comes on a day when seniors are advised to stay home.

The Vice-Chair: It's only because of the cold.

Mrs Levis: Right. The Ontario Coalition of Senior Citizens' Organizations is a seniors' organization dedicated to providing an opportunity for seniors to become involved in and participate in society. OCSCO also acts as a forum to bring a representative group of seniors together to share information, raise issues of common concern and engage in group activities related to those concerns. For instance, our organization has dedicated much time and effort to the new long-term care reform talks that have been taking place for some time.

Our membership consists of 56 organizations representing over 450,000 seniors across Ontario. Over the last year, OCSCO has been involved in education and advocacy on many issues such as long-term care, the Advocacy Act, cutbacks to social programs, and in addition, the issues of seniors and housing.

While there are different housing options for seniors in Ontario, one will recognize that these alternatives are primarily based on income level and physical ability. Some seniors are physically and financially able to own their own house or rent a private apartment. There are those well seniors who live according to their limited income. Their options would be subsidized housing or boarding homes.

There are those seniors who may need a certain amount of help to cope with everyday living. These seniors, again depending on income level, may live in nursing homes, homes for the aged, a privately owned rest and retirement home, and possibly a boarding home. It is only through this legislation, Bill 120, that seniors living in the unregulated rest and retirement homes and boarding homes will be entitled to the same protection and safety as seniors living in regulated facilities.

Increasingly, seniors are choosing to remain in their own home and community to preserve their independent way of life. This has a profound impact on the quality of life for seniors. Aging in place has clearly become the preferred way to live.

Seniors today feel that the issue of housing is a top priority and one the Ontario government should take seriously. One of the most significant housing issues affecting seniors is the scarcity of affordable housing in many parts of Ontario.

The seniors who own their own dwellings need options available to enable them to continue to afford it. Those seniors who rent their accommodation need protection and safety standards to live safe and secure lives. OCSCO believes the residents' rights bill addresses these areas.

There is a section in our brief which indicates something of the income levels of seniors and you'll note that some 56% of seniors are below the \$25,000-a-year category, which does not indicate, in urban areas at any rate, a very high standard of living.

Seniors in unregulated accommodation: The inquiry of Dr Ernie Lightman's commission into unregulated residential accommodation uncovered many instances of seniors being subject to unhealthy living environments. In these unregulated rest and retirement homes many seniors have been subject to physical, mental, sexual and finan-

cial abuse. The seniors were subject to eviction with little or no notice. There was little respect for their privacy. They were denied access to visitors. Often these tenants have been prone to a sudden steep rise in costs; that is, rent and care. These conditions have made for unsafe living conditions for many seniors. Bill 120, the residents' rights bill, addresses these issues.

OCSCO has been addressing these housing issues for many years and we congratulate the Ministry of Housing's current legislation, Bill 120, the residents' rights bill, for responding to these problems. OCSCO fully supports this legislation.

We would now like to discuss several issues of Bill 120 on which OCSCO commends the Ministry of Housing. Particularly, we will focus on the legality and adoption of apartments in houses, the garden flats, into the Rent Control Act and the Landlord and Tenant Act, and also the changes to the requirement for rest and retirement homes to fall under these housing laws.

Apartments in homes: OCSCO supports Bill 120 because of, first, affordability. The residents' rights bill gives seniors who are living in their own homes the financial ability to continue to do so by permitting them to create an apartment in their home. This will enable the senior to legally charge the designated amount for rent, thereby generating income for themselves so that they can afford to stay in their home for as long as possible.

Legalizing apartments in houses will also create a more affordable housing option for seniors. Generally, this type of rent is less expensive than conventional apartment units. Therefore, some seniors can now afford to live in these types of units on their limited income.

Secondly, garden suites: Bill 120 also gives seniors the option to live in a garden suite. This, in essence, allows them to live on their own while being close to other family members who can provide security, companionship and assistance with some daily living duties. Garden suites maintain both parties' privacy and independence and allow seniors to stay in their community. This, in effect, will decrease the cost of institutional care.

The residents' rights bill will allow for both types of living environments, that is, apartments in homes and garden suites, to be legal and safe for seniors and everyone in the community. Under this legislation, apartments in houses and garden suites will have to be designed under strict health and safety standards. We're presuming this. As both of these types of living arrangements will be under the Rent Control Act and the Landlord and Tenant Act, tenants will be protected from such abuse as involuntary evictions and rent hikes. This legislation will give tenants living in these new dwellings the same rights as tenants living in apartments.

1540

The legislation, however, does not provide for a quick removal of tenants who may cause harm to themselves or others in the house or dwelling. Therefore, OCSCO recommends that the legislation include a section for a speedier process of eviction for tenants who pose this threat, or some way of temporarily removing such tenants pending settlement of the dispute.

Seniors in rest and retirement homes: OCSCO supports Bill 120 for changes it has established in the area of unregulated rest and retirement homes and boarding homes. OCSCO believes that seniors living in care homes should enjoy the same rights, security and protection under the law as other tenants. As discussed above, this is not often the case in Ontario. The rest and retirement homes operated on a commercial, for-profit basis don't always provide for protection.

The Ministry of Housing, through Bill 120, has addressed this issue by ensuring that the rest and retirement homes become subject to the Landlord and Tenant Act, the Rent Control Act and the Rental Housing Protection Act. With this legislation, standards will be improved and the senior will be assured of security of tenure and protected from involuntary rent increases.

OCSCO believes that by having these facilities fall under the legislation of the Rent Control Act and the Landlord and Tenant Act, it will stop the abuse of overcharging for rent, the unconditional evictions and the threat of abuse that are so widespread.

As these facilities will also come under the protection of the Rental Housing Protection Act, it will also protect the tenants from having their building destroyed or converted without the approval of the municipality.

These two major changes for tenants living in rest and retirement homes will ensure better living standards, protection from abuse and give them the same rights as other tenants.

We note that under Bill 120 residents in care facilities will pay for care and food separately from their accommodation costs. While there is provision in the bill for notice of 90 days to be given for increases in the non-rent charges and the official filing of notice for increases, we are concerned that there is no provision in Bill 120 for any other protection from unwarranted rates of increase. We fear there may be exploitation for non-rent items provided. We urge the government to put limits on this section of charges either through the Rent Control Act or some other mechanism.

OCSCO would like to thank the Ministry of Housing for inviting our comments at this hearing. We look forward to seeing the residents' rights bill make a speedy passage through the Legislature to allow for seniors to live more independent, safe and secure lives.

Mr Cordiano: I guess the main area of concern that I have deals with care provisions in homes. By and large, by eventually putting that under the purview of rent control, or mandating that care be regulated under rent control, and charges for it, in that you would have a ceiling price for those care provisions, that would eventually lead to a deterioration in the quality of service or the quality of care. That's my view essentially. I would be concerned that once care comes under the purview of regulation or rent control, once you do that, then that care will suffer, the quality of that service will deteriorate eventually. Are you not concerned about that?

Mrs Levis: No. Because of some unfortunate occurrences that we are aware of in the city of Toronto, what we've been concerned about is sudden increases in costs

that bear no relationship to the cost of living at the time. We recognize that care costs need some increases from time to time as the cost of living increases, but what we're concerned about primarily is some mechanism to make sure that the increase does not become exorbitant.

Mr Cordiano: Okay, fine. Do you have another question?

Mr Grandmaitre: Yes. I think you were making an allusion to rest homes or retirement homes that are receiving provincial grants or subsidies. What about the commercial homes, the private homes receiving no government subsidies? Do you think these should be regulated too?

Mrs Levis: I think there are two aspects to this, and one is, as the bill does, separating the accommodation aspect from the care aspect, because one of the big problems, it seemed to us, is that up till now people have not had security of tenure. If they're a resident of a care home, that is their home. That's where they live permanently, or at least as permanently as life makes it, so that type of security, we feel, is needed by residents of care facilities.

That's why we welcome the inclusion of this, as Dr Lightman has pointed out in his inquiry, and we certainly supported his recommendations when they came out and certainly felt, as he did, a little put out that it took so long to act on these recommendations. So that's one aspect of it. We feel that no matter where people live, that's their home, and they need protection for that type of accommodation.

Now, the care aspect is another matter. I think, as we've pointed out, depending on the income, there are retirement homes where the charges are quite high and the accommodation is quite luxurious, and that's fine for those people who can afford it.

Mr Grandmaitre: Should they be regulated? Should they be under the Landlord and Tenant Act?

Mrs Levis: To the extent that the tenants, or the residents, have the protection of the Landlord and Tenant Act, that they have security of tenure. You see, one of the problems that we've come across is people who fall ill—they have a stroke, something happens—have to go to an acute care hospital for a time. When they come back, they are more impaired physically than they were and very often they're given a notice to leave. Some of these retirement homes say, "We can't cope with people who need more care." What we're saying is that if this is their home, they should be permitted to come back. Now, the care provision is another matter.

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Mr Arnott: I have a couple of questions.

With this bill we've heard from a number of presenters that it's an omnibus bill, and that means it deals with a number of somewhat unrelated items dealing with housing. That makes it difficult because those of us in the opposition may support specific aspects but others we may be against. So it becomes a judgement as to whether you're going to support the whole thing or parts of it, and that's our challenge.

The issue of basement apartments, though, is one of

the most controversial elements in the bill, and the issue of safety that's come forward, most notably yesterday by the chief of the fire department in Mississauga. It's a really important concern that we have to look at. Do you think that this provides adequate mechanisms to ensure that all basement apartments that may be created as a result of this bill—will there be adequate protection to make sure that those tenants are going to be safe in their apartments in the event of a fire?

Mrs Levis: This of course is partly the responsibility of municipalities to regulate and I would hope that they would make the regulations for the new basement apartments such that they will be safe. This is one of the reasons why we feel that this aspect of the bill should be supported, because there are so many apartments now that are not safe. In the future we would like to see apartments that do exist have that security of whatever is required by the fire department and by other regulations for exits and for alarms and that type of thing.

Mr Arnott: So it would be up to the municipal level of government to ensure the safety. Okay.

With respect to garden suites, more popularly known as granny flats in our area, I think most people are very supportive of the concept in principle, and then it becomes an issue of which level of government has the right to establish mechanisms for approval and for inspection, I suppose. Do you think those mechanisms are going to be adequate in this bill to ensure that approval mechanisms are there and that this will be looked after appropriately through the municipal level of government?

Mrs Levis: I can just make a general statement. Here again it is partly the municipal regulations that are going to guarantee that. I don't really like the term "granny flat" because maybe grandpa also might be there.

Mr Arnott: Sure.

Mr Winninger: You're in trouble now, kid.

Mr Arnott: I know. That's what we call them up home. We're comfortable with it, but some may have another preference.

Mrs Levis: However, I can see this in suburban areas and in small towns and so on. I don't quite see it in downtown Toronto. I would hope that there would be the requisite regulations about exits and fire alarms and safety measures.

Mr Arnott: The Lightman report, I think, was shocking to just about everybody who would have read it, some of the appalling things that have been happening in the recent past, actually, and the need for the government to take some action in that respect. It appears to me that with this bill the government is bringing in new measures to regulate tenancy for residents in rest homes, yet there doesn't seem to be adequate regulation surrounding care through this bill. Do you think this bill goes far enough towards recognizing some of the problems that came through in the Lightman report?

Mrs Levis: I think that some of the recommendations of the Lightman report are not looked after by this bill, certainly. I don't know whether the government intends to proceed on some of the care issues. I can see why some of it would be separated because of dealing with

housing in this bill. But yes, we are concerned about what provisions would be made on the care side.

Mr Mills: Thank you very much for coming. I think your brief makes so much common sense, of all the briefs that have been here so far. I want to commend you for that. I'd also like to thank you for this chart, "Seniors are not rich," because my colleagues have all got the wrong impression about me and that puts it right.

Mr Sean G. Conway (Renfrew North): How many pensions has he got?

Mr Mills: Anyway, thank you very much for that.

We hear from the opposition and I hear presentations to say that this is not really good news, yet here we are in a country where we're pressed to the limit for health care and health care costs, and I think the proposals that you make and what the government is making allow seniors to remain in their homes longer, to remain self-sufficient longer, to have less impact on our social services and our health care system. Why on earth people are not supporting this for those reasons alone is beyond me. But I'm not going to get political.

I want to talk about the garden suites. It's my understanding, and I'd just like to ask you if you concur with this, Bea, that seniors, when they are among their family, seem to go on for ever. But I have experience and I know folks whose children say, "Look, Mom, we can't do this any more; you've got to go into a nursing home," and from that day on there's a deterioration in the mental and physical wellbeing of that person. They just go downhill. Is that your experience of seniors, briefly?

Mrs Levis: Yes, certainly we've seen instances where, particularly with the cuts, may I say, in social services and in homes for the aged, which are centred on recreation types of thing, there is definitely a connection. One of the problems with many seniors is that you get used to living in a certain neighbourhood and a certain area under certain conditions. You want to stay there as long as possible because that makes you feel more secure. You know where you're at and the people in the stores know you and so on. So it relieves your mind a great deal to have that security, to be able to live where you're used to living and where everybody knows you and you know everybody else.

Mr Mills: And the seniors—

The Vice-Chair: I think that you might want to leave some time for your colleague.

Mr Mills: Okay. I beg your pardon. Thank you.

Mr Stephen Owens (Scarborough Centre): Thank you, Mr Mills. Like my colleague, I want to thank you for your warm and supportive presentation on the legislation. It addresses a number of issues with respect to affordability and protection that I think we in this room all share.

In terms of allowing seniors to stay in their homes longer, as you were just mentioning to my colleague Mr Mills, and what could be viewed perhaps as companion piece of legislation, which is a long-term care strategy or long-term care legislation, do you think that will be a good way to dovetail the two issues in terms of having not only seniors, for that matter, but folks who are

requiring long-term care to be able to remain in the community, perhaps living in an accessory apartment while being able to opt into the kinds of services that are envisioned by the long-term care strategy? Could you comment on that?

Mr Morris Jesion: Yes, I agree with your direction. I believe the long-term care reform that's going on in this legislation is very compatible in terms of providing seniors with independence and security, having care provisions set out. I think there has to be consultation and working with the long-term care reform area to make it even more compatible, but we're certainly satisfied that it's moving in the right direction.

The Vice-Chair: This concludes your presentation. We thank you for appearing and we hope you can fight the cold out there.

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LIFESTYLE RETIREMENT COMMUNITIES

The Chair: The next presenters are Dynacare Health Group, Larry Popofsky and Nancy Douglas.

Mr Larry Popofsky: Good afternoon, Mr Chairman and members of the standing committee on general government. My name is Larry Popofsky and I am the senior vice-president of operations for Lifestyle Retirement Communities. I am appearing today with Nancy Douglas, who is the general manager of one of our retirement communities, Churchill Place, in Oakville. As a registered nurse and as an instrumental part of the Lifestyle team developing resident care policy, Nancy also provides leadership and guidance to our resident care managers.

Lifestyle Retirement Communities has been operating retirement residences since 1987. We have at present eight residences on six properties in Don Mills, Toronto, Mississauga, Oakville and Burlington. These residences are geared to active, healthy seniors, typically in the 75-plus age category, who are seeking freedom from the chores of daily living such as housekeeping, laundry and preparing meals. They are looking for a friendly, comfortable, functional and secure living environment where they are well cared for without losing their independence. Lifestyle Retirement Communities is committed to providing top-quality accommodation and a full range of personal services to senior residents and their families at affordable prices.

Currently, the average age of our residents is 84. Lifestyle has approximately 500 employees, of whom 300 are full-time workers. Over 75% of our workforce is female.

In order to meet the needs and changing care requirements of an aging population, Lifestyle Retirement Communities has developed three levels of service, which results in a true continuum of care: apartment-style living for the independent senior; full-service living, in which each resident is provided with an individual care plan; and assisted daily living, or ADL, which provides more specialized care on both a short respite term and long-term basis. Nursing response is available 24 hours a day and there are house doctors always on call.

Our presentation today concerns the impact of Bill 120

on our ability to continue to provide top-quality accommodations and care as demanded and required by our residents and their families.

We are familiar with rent control legislation and agree that residents should not be subject to unreasonable and arbitrary increases in their rents. In fact, Lifestyle's policies concerning increases to occupancy fees have always included a 90-day written notice prior to an annual increase. The past two increases have equalled the increase set forth by the province for tenants of apartments subject to the Rent Control Act. Our major concern with Bill 120 and the reason we are here today is the adverse effect we believe the implementation of the Landlord and Tenant Act will have on the quality of life enjoyed by our residents.

As mentioned earlier, our typical resident is in his or her mid-80s, with many who are well into their 90s. As individuals reach this age, problems associated with the natural aging process bring tremendous anxiety to both the residents and their families. Health maintenance and safety become of paramount importance. Families look to us to care for the residents' current needs, as well as monitoring and reacting to increased care requirements as residents grow older and more dependent.

To give you some examples of the problems we anticipate from the application of Bill 120 as it is currently proposed, I would like to call on Nancy Douglas.

Ms Nancy Douglas: To begin with, I would just like to share a few relevant statistics with the committee to give you some insight as to why people choose to live in a retirement community such as Churchill Place.

First, the 70-plus age group is a fast-growing segment of the population. The Metro Toronto planning department's demographic production of August 1990 shows this group going from 237,000 in 1986 to 412,000 by the year 2011. From *Focus of the Future*, Statistics Canada, July 1988: "But while seniors maintain their own homes, statistics show that when they reach their mid-70s, more Canadians tend to rid themselves of home maintenance and look for residential accommodation or institutional care."

And from *About Time—Getting Older*, Ministry of Community and Social Services, February 1988: "What is really interesting about this group (50-plus), particularly those in the 75-plus age bracket, is that they depend heavily upon recommendation of friends and relatives when making purchasing decisions. Approval of their offspring, particularly daughters or daughters-in-law, is of prime importance to them when making decisions pertaining to proposed changes of residence."

The individuals who make the choice to move from their present homes to our retirement residences do so for a variety of reasons. Many of these are based on their families' decisions around a loved one's anticipated health care needs, which are seen to be better handled in the environment of a retirement community. Our residents and their families have definite expectations about the level of care that retirement communities should be able to provide. My concern is that with the introduction of the provisions under Bill 120, we may be forced to follow procedures which will jeopardize the health and

safety of our clients. This brings with it increased exposure to liability, as individuals' and families' expectations will not change.

Some specific examples of how Bill 120 may adversely impact on our residents include the following.

Our nursing care plans for certain individuals may require daily monitoring or the administration of the residents' medication. Often these activities are carried out in the residents' suites for reasons of privacy, convenience and comfort. Similarly, procedures such as dressing changes and assistance with ambulation require access to the residents' suites.

A rough estimation would place this requirement for daily monitoring at approximately half our residents. While it is clear that the legislation contemplates access for activities such as housekeeping and response to the emergency call bell, what consideration has been given for allowing the ongoing provision of other health care related activities as they may be specified in an individual resident's nursing care plan? This concern is increased when it is unclear whether a resident is able to grant consent for entry, for example, with our meal census.

When residents advance in age, their health care needs may change and require a move to a suite or a facility which can provide a higher level of care. This transfer would not be permitted under the new legislation. A typical example at Churchill Place concerns Mr N, who formerly resided with his wife in the mainstream of the building. He has a diagnosis of severe diabetes and now suffers from several related health problems.

In a conference held with the family, options were discussed with both Mr and Mrs N, their son and daughter-in-law, their family physician, our resident care manager and myself, the general manager. It was decided that the best option for both Mr and Mrs N would be for Mr N to transfer to our assisted daily living unit within the residence. In this way, both spouses could reside in the same building, continue to enjoy each other's company and to receive the required level of care and support. At present, the Landlord and Tenant Act does not allow a retirement facility to move a resident from one area to another which is designed to deal with specialized needs.

A similar situation could arise from the transfer of an individual to a long-term care facility, either for health reasons or financial reasons. For example, consider the case of Mrs C, who, upon admission, required a minimal amount of care but who has now been diagnosed with Alzheimer disease and must be cared for in a secure environment. A family conference revealed that Mrs C was not in a position to afford ADL care on a long-term basis and therefore would require a transfer to a nursing home facility. The procedure for handling this so-called incompetent resident and the process for transferring out of a retirement community for health and/or financial reasons is further confused by the implementation of Bill 120.

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Many of our residents do not require nursing care as such, but they and their families wish our residence staff

to provide a level of monitoring for safety reasons. For example, a meal census is carried out by our nursing staff three times daily to assess that each resident is well. In addition, supervision is provided by the chef manager to provide for any special dietary needs. Finally, family conferences are held on an ongoing basis to alert all parties to any changes in health care needs or status. There is considerable confusion in the industry about whether Bill 120 will continue to allow retirement communities to provide these services.

Again, because of changing health needs of residents, there may be a change in the variety of services which are needed. Such services include laundering of personal clothing, delivery of meals directly to suites, and assistance with bathing. For example, currently we have Mrs M, who's ready to return from the hospital, and for a period of likely four weeks she will require expanded direct care services until she regains her strength and mobility. It would appear that provisions under the bill as it is currently written do not allow for this kind of flexibility to increase the level of service and to charge an appropriate fee for that special period of time.

As well as providing care for our permanent residents, we are often asked by seniors, family members, hospital discharge planners and Red Cross homemakers to provide respite care. In this way, we are able to provide a valuable service to the citizens of our community.

Recently at Churchill Place, Mr B was comfortably housed following his successful cardiac surgery for a period of three weeks to receive nursing supervision, dining room and daily housekeeping services. Mr B stated that he recovered quickly and happily due to the efforts of our staff.

Another example concerns Mr and Mrs A, who normally live with their daughter and their son-in-law and who wanted somewhere to stay during their daughter's four-week winter vacation. They moved to Churchill Place to take advantage of the full service program which they required, and, because of all the scheduled activities, they reported having enjoyed their own vacation as much as their daughter had enjoyed hers. It would appear that Bill 120 does not allow for this kind of arrangement to be made.

Finally, there is the very difficult matter of a resident who must be removed because he or she may be a threat or a serious nuisance to other residents or to themselves. Bill 120 does not appear to have provision for this transfer, except by way of the Mental Health Act, form 1. In my personal experience as a psychiatric nurse at the Clarke Institute, this form is only used in the most extreme of cases and would not be applicable in the majority of situations that are common to retirement residences.

Mr Popofsky: I would like to thank Nancy Douglas for her valuable input on how the element of care in our residences would be jeopardized by the implementation of Bill 120 as it is currently written.

Mr Chairman, we thank you for the opportunity to make our presentation and would welcome any questions.

Mr David Johnson: Thank you very much. It's really

useful for us to hear from people who have experience right on the line, and I must say you conveyed a number of messages that we've heard before. Certainly there's an increasing awareness of the problems you face.

You mentioned the problem about being able to gain entry into the units under the Landlord and Tenant Act unless there's consent to enter, and having to give 24-hour notice to enter. What sort of problems would this create if that in fact happened?

Ms Douglas: The one problem I addressed briefly was our meal census, a security measure we take. All our residents are able to come and go from their own private suites as they wish, but they and their family also want a provision that at least three times during the day we know they're well and don't need our assistance. The nursing staff checks the dining room to see who is not present at that meal, and then our routine is to call that resident's suite. Perhaps they've had a nap and slept through, or perhaps they are having a health problem and do need our attention. We would then go up to the suite, if there's no answer by telephone, to ascertain whether there is a problem. This is obviously something that cannot be planned for; there's no way we would know 24 hours ahead of time, as I understand the bill requires, whether that visit were necessary. That would be one example.

Mr David Johnson: Another problem you've alluded to, and I just wonder how you would manage this, is that particularly as people get up into their eighties—and your average age is 84—care needs could change, and there's severe doubt under the bill about what would happen if somebody needed additional care that you don't provide, and you can't move them unless there's consent. Of course, if there's consent this all works out, but if for some reason the person we're dealing with doesn't want to move and wants to stay put, what are you going to do if he or she needs some kind of care that you don't have? What happens?

Ms Douglas: I can only speak to what presently happens. I can't speak to what will happen in the future because I'm not sure what's going to happen with this bill and what, if any, changes will be made to it.

First of all, I've heard a lot of talk about the transfer and eviction process, and I would like to address that. In all my experience, it's not ever a sudden thing that happens. It's an ongoing process. There is always communication between myself, my staff, the family and the family doctor to keep them informed of what is happening and to be looking ahead down the road to what changes may be forthcoming.

Many of our residents already have filed long-term care papers through their physicians. I'm located in Halton region. Halton region has the worst ratio of long-term care beds to population, and our residents simply can't get a bed there very easily; we have people who've been waiting two years for placement. We try and come up with some care plan in the interim to keep that person as safe and as healthy as possible, but it is very difficult.

Mr David Johnson: And if they refuse to move and you can't evict them, you're going to have a problem.

Ms Douglas: Yes.

Mr Arnott: Just one short question. Are the examples you've used based on actual things that have happened or are they hypothetical?

Ms Douglas: These are real people who are living in Churchill Place as we speak.

Mr Arnott: How would Bill 120 preclude you from providing respite care in the future?

Ms Douglas: It's my understanding that under Bill 120, the agreement has to be for a long-term basis, that it can't be for a period. We've had people who've stayed to convalesce for as short a time as one week, and there is no provision for a contract for one week.

Mr Arnott: Certainly the ability to provide respite care is an important aspect of maintaining seniors in their own homes over a longer period, as long as possible, which is I think one of the government's objectives.

Ms Douglas: There's a real need in the community for respite care. The discharge planner calls us on a very regular basis asking for that kind of accommodation, for many and varied reasons but, as you said, Mr Arnott, generally for the independent senior who lives in his or her own home but, due to illness or surgery, for a time needs extra help on a 24-hour basis as opposed to a homemaker making a short daily visit.

The Vice-Chair: Thank you very much. Mr Owens.

Mr Owens: I'll yield my time to the parliamentary assistant.

The Vice-Chair: Mr Winninger, are you yielding your place too?

Mr Winninger: Yes.

Mr Gary Wilson: As questions on some technicalities have been raised, I would like to ask Terry Irwin from the ministry to talk to the specific issues about the various situations regarding the care provisions, if that's permissible to you.

The Vice-Chair: You can certainly do that within your own time.

Interjections.

Mr Gary Wilson: Absolutely; you'll get your turn.

Mr Terry Irwin: I'm not sure where to begin, Mr Wilson.

Mr Gary Wilson: We could address specifically the issue of the 24-hour notice.

Mr Irwin: This comes up a number of times. Let's take the example of the meal census that you've mentioned, where you knock on the door and the tenant responds and allows the person to come into the room. There's no problem with that. You've obviously discussed this with the family and this is an ongoing arrangement.

Ms Douglas: What if the resident cannot respond?

Mr Irwin: You use common sense, and it certainly could be deemed to be an emergency situation.

Mr Popofsky: Would that not be subjective, though, sir? Who determines what is an emergency? The act does not specifically, to my understanding, classify what an emergency is. The difficulty is that it would be a subjective

tive approach on the part of the person entering the suite, and you may cause someone to be upset as a result.

The Vice-Chair: I suggest, to make things clear, that questions should be addressed to the Chair and redirected.

Mr Popofsky: My apologies.

The Vice-Chair: Of course, Mr Wilson, if you want to give the ministry official all of your five minutes, that's fine, but you have the floor.

Mr Irwin: It's not a problem. Certainly if the tenant does not give consent to enter, the Landlord and Tenant Act preserves that right. By the sound of it, it's a situation you've worked out with the tenant and the family, and on the surface there appears to be no reason why the tenant would refuse that right.

Mr Popofsky: But can.

Mr Irwin: But can, yes.

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Mr Cordiano: Could I ask a question of—

The Vice-Chair: No, Mr Wilson still has the floor.

Mr Gary Wilson: I think there was another issue you were concerned about: if the provision of care had to be increased. Could you respond to that?

Mr Irwin: There's nothing in Bill 120 that would require a landlord to provide extra care. If they're not offering that care service in the complex, there's nothing in this bill that would require that. Mr Owens talked before about the government's redirection of long-term care. A third party could provide that extra care, if that's an appropriate situation or available. Certainly the government is working towards that over the longer term. Otherwise, the situation is as it is now: You work with the tenant, with the family, and try to find another accommodation for them. But there's nothing in the bill that would require the landlord to provide that care.

The Vice-Chair: Mr Winninger, did you want to ask a question?

Mr Winninger: Just to build on the comments of the ministry official, it would seem to me that in the present system there is considerable flexibility, provided you have the consent of the resident or, if the resident is incompetent, the consent of a substitute decision-maker. As you've observed, in extreme cases you may have to invoke the provisions of the Mental Health Act.

I'm not sure from my reading of the bill and what the ministry presented and the evidence of the various deputants that we've changed in any substantial or material way the manner in which care is delivered. In fact, we've expressly excluded care, so if a patient is seeking a short period of respite care or temporary care, there can be a contract for services to provide that care, short-term or longer-term. If you have to move a patient up to more intensive care, you would seek the approval of the resident or you'd get the substitute decision-maker to help make that decision. Frequently, families cooperate in making those decisions, and to some extent our Substitute Decisions Act and advocacy legislation will provide those necessary supports.

I know you used the word "may" quite frequently in your presentation, so there may be some uncertainty for

you surrounding the legislation and how it will be interpreted. Hopefully, through consultation with the ministry, you can lay some of those concerns to rest.

Ms Douglas: Excuse me, Mr Chair. Could I ask Mr Winninger—

The Vice-Chair: That would not be permissible.

Ms Douglas: Well, has the substitute decision-making passed? Is this presently in effect?

The Vice-Chair: It has not been proclaimed yet.

Ms Douglas: Thank you.

Mr Winninger: I was using the term because right now we have substitute decision-makers like committees and guardians that assist as well.

The Vice-Chair: Your time has expired; we will turn to the Liberal caucus.

Mr Cordiano: I'm not going to try to rehash some of the areas we dealt with with the Ontario Residential Care Association, but let me ask you these specific questions: Have you ever had in any of your facilities what's euphemistically called a garbage bag eviction?

Ms Douglas: No, I haven't, and I've been associated with Lifestyle Retirement Communities for four years. I know of no evictions, and certainly not the garbage bag variety which were so well publicized and of which we are all very aware. They've had a very high profile.

Mr Cordiano: I know you have very well run residences. With respect to discharges of problem tenants, how do you handle that situation?

Ms Douglas: Each situation, of course, is very individual, as problems always are, so there's not a blanket answer to that. I guess the beginning point is that at the time of admission there is always a communication between ourselves, the prospective resident and their family. They know what our scope of practice is and so on, and they know what our limitations of service are. They know what they can expect from us in service.

As I mentioned before, when any changes occur, either in health or problems, which are not always related to health, it's an ongoing communication, an ongoing process. We work together very closely with social work. Yesterday, for example, for lunch, we had Judy Donnelly, who's the executive director of the Halton placement coordination service, with us. If people need other facilities, we are very instrumental in helping them find other accommodation.

Mr Cordiano: The whole question I'm concerned about is with respect to this emergency entry, a situation where you have to deal with it very quickly, and that's not dealt with in the act in a satisfactory way, as you have pointed out and as other people have pointed out. I don't think the ministry has satisfactorily answered that question even today. I pointed this out to the minister, that we have grave concerns around that, that you are going to put residents in a vulnerable situation if this is not dealt with in the bill by way of amendment.

I hear what you have to say around that. I just want to agree with your point of view, that we have problems with that, and hopefully some of the amendments we'll be putting forward will be accepted by the government.

Ms Douglas: We have been given a trust by the family and the residents to provide a level of care and a level of service and a level of protection. We would just like to know that that is going to have some accommodation in the bill, that we're able to proceed in that way.

Mr Grandmaître: You would qualify as a private enterprise. Have you ever received subsidies from the government?

Mr Popofsky: No, sir.

Mr Grandmaître: Do you feel that the government should regulate you? You haven't been depending on any government—municipal, provincial or federal—and now they want to walk into your place and regulate you.

Mr Popofsky: Frankly, I'm totally opposed to Bill 120; however, I recognize perhaps the realities of the day. We have no difficulty with the rent regulation component. That is to say, we have always followed on a voluntary basis the same provisions that apply to traditional rental accommodation.

Where we have some difficulty, however, with this bill as it currently stands is the pragmatic implementation of some of the other aspects which directly relate to traditional rental accommodation. The facilities we have are not traditional rental accommodation as contemplated under the Landlord and Tenant Act and as contemplated under this specific bill.

What we are suggesting, perhaps, is the implementation of certain amendments, a closer look on the part of those who are responsible for the writing of this bill, to think very, very clearly of specific facilities such as ours and those the members of the Ontario Residential Care Association have under their jurisdiction, as opposed to tainting us with the same paintbrush, if you will, as boarding houses and rooming houses.

The Vice-Chair: That completes your presentation. Thank you very much for appearing before the committee.

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SOUTHRIM ENTERPRISES
HEALTH CARE MANAGEMENT SERVICES

The Vice-Chair: The next presenter is Mr Dan Scully from Southrim Enterprises Health Care Management Services.

Mr Daniel Scully: Thank you, Mr Chairman. I've distributed a three-page brief of my remarks. I'm sure I will be repeating some of the points that were made earlier in your proceedings, but I think three points in particular deserve very close and serious scrutiny, so I've set them out here.

By way of background, I've been involved in the health care field for more than 20 years, both in the nursing home profession and also in retirement lodges. Our company provides consulting services to hospitals and other elements in the health care system, and we also manage non-profit apartment complexes under the non-profit housing program.

Due to the prominent role of health care in retirement homes, it is inappropriate to adopt housing controls and make them apply to the health care section. I would add to that, "without amendment."

Residents enter retirement homes for the purpose of receiving care or to have care readily available, not because they enjoy the lifestyle, necessarily. In fact, there is little difference between a nursing home patient and a retirement home resident other than the degree of care required. The average age in both types of projects is practically the same; that is, 80 to 85 years.

Retirement residents are usually frail, with multiple health concerns. Due to the advanced age of the typical retirement home resident on admission, the average length of stay is relatively short. Fairly intensive efforts are expended monthly in dealing with transfers of residents to more appropriate care settings than retirement lodges.

The first major issue I'd like to review with the committee is the issue of rent controls. I would agree with the previous group where they said they really don't have any problem with rent controls per se, and this is our experience as well. I would suggest that our operations would be quite similar to those of Lifestyle. Our increases in each of the last three years that our project in Hamilton, for instance, has been in operation, have been substantially below the guidelines imposed on non-profit housing projects.

However, I say in my brief that rent controls should be replaced with a requirement that owners give residents proper notice of increases. There is a substantial vacancy rate across the province. This has been my experience over the last 20 years, and it hasn't changed: 80% to 85% occupancy has been my experience over the time I've been involved in the health care field, and it's certainly the case today.

This affords residents easy ability to transfer to another facility should increases be inappropriate. The major problems concerning rate increases have occurred when operators entice residents to enter a facility with rates lower than market in order to fill up. When fill-up occurs, the operator may be faced with a large gap between current rates being charged and market rates.

This problem would be covered by requiring residents to be advised on admission of the difference, if any, between the proposed rate to be charged and the market rate which the operator would charge if he were not offering incentives. Competitive conditions in the market, that is, supply outstripping demand, will ensure that residents are offered the lowest rates possible. To allow the current legislation to pass unamended would give future new residents entering suites where the previous tenant was paying reduced rates an unfair price reduction—unfair to the operator and unfair to other tenants paying market rates.

Mr Chairman, I'll give you an example of this situation. Let's assume that rent controls are an inevitable result of this legislation, a situation I indicated earlier I would have no problem with, keeping our rate of increase and our rates below the guidelines. We've certainly been able to do that in the last several years of our operations. However, again using as an example this property in Hamilton, when we opened the residence we offered a pre-opening rate to those residents who would agree to come into the facility on opening, and we signed up

approximately 15 individuals at pre-opening rates. These rates were approximately 15% below the rates that tenants or residents were charged after we opened. In the intervening years some of these original residents have moved on, but we have more than 10 of these original residents still in the facility, and their rates are still 15% below the so-called market rates we charge new tenants because the rate of increase we have given to these individuals who were on the pre-opening special, 3% or 4% or whatever, was based on their pre-opening special rate.

As I understand the current legislation, on November 22 or thereabouts we are to advise the ministry about what rates are in place. Approximately 15% to 20% of our rates are at this pre-opening special level. As I further understand it, what would happen in that situation is that if one of these rooms is vacated, the new resident coming in would not be paying the same rates that the other tenants are paying but a rate based on the special pre-opening price, which only applied to those who came in when the facility opened.

I think this is something that possibly is not widespread. It probably applies mostly to newer facilities that have opened in the last few years, ours being one of them. We have been treating the existing residents with sensitivity, keeping the increase in rates below the guidelines for those apartment buildings under rent control. But if this legislation passes in the way it's currently drafted, then as these pre-opening suites get vacated they will always be at a lower price than exactly the same accommodation occupied by people paying market rates.

Another point I'd make is that I don't agree with certain things which have happened in the industry over the years, where tenants who are in an existing facility—I'm thinking of one in Toronto which is quite notorious, where they were given an 18% rate increase. I don't agree with that at all. That is something that needs to be controlled. However, I don't believe it's widespread.

In any event, in an effort to address that problem, I think the legislation causes an unfair situation in cases in which operators may entice residents to come into a new facility, where because of the losses that are usually generated, they want to fill up as quickly as possible so they may offer a pre-opening or a special rate, having in mind that when that suite is vacated they would want to move that rate to the proper market rate. I would submit that as long as the tenant or resident knows they're getting a special rate, that the real rate for the room is, let's say, \$2,000 and they're paying \$1,500, I think that's the significant point that needs to be addressed in the legislation: that when that tenant or resident vacates that suite, that special rate no longer applies, necessarily. It may be in the operator's interest to offer again to a new tenant a special rate, but that would be the operator's decision to make, I would submit.

The problem—and coincidentally, this happened at our Hamilton property just recently. A group of residents came to us and said, "Why are we paying more for the same type of accommodation as these other people?" the other people being on the pre-opening rates. This problem

would just be compounded under the current legislation.
1640

Accessibility to rooms: I'll be very brief because I thought the last submission was very clear and made the point very well about accessibility to rooms, and I take the committee back to the overview. I think this is where the basic thrust of the legislation falls short. It's simply not possible to take what is housing legislation applicable to self-contained rental units and just have it apply to congregate living facilities, basically a hotel with a health care component. That's basically what we're talking about: All the meals are taken in the dining room, there is interaction required on a daily basis, and then there's the health care component.

In my opinion, I don't think proper care and thought has gone into the drafting of this legislation to ensure that these special requirements of retirement lodges with health care components, which we all have, are properly addressed. I would suggest to you, Mr Chairman, following up on the last submission again, that in the case of an individual who has a smoking problem—for instance, he or she may smoke copious amounts of cigarettes and fall asleep, let the cigarette drop on the floor or the bed—it's a hazard not only to that party but also to all the residents in the facility. There may not be an emergency, under the words in the legislation, sufficient for staff to go into that particular tenant's or resident's room and check to make sure that the cigarette is extinguished, this type of thing. Even though we may try to put controls in place and work with the family to make sure that smoking is curtailed in a case like that, the tenant may not decide to go along with it.

There may not be—and I would submit there are not on an ongoing basis—occasions where we could say there is an emergency or a potential emergency happening so that we can gain entry without getting the tenant's permission.

Another example that happened to us is that one of our residents committed suicide, unfortunately, and notwithstanding the fact that we knew there was a previous attempt and we were checking on this individual on a regular basis, he was determined to take his own life and we were unable to stop it. I would submit to you that that's another situation which would require staff to be able to attend in residents' rooms without, necessarily, the tenant or resident giving permission for entry. Certainly in that case of the suicide the resident did not want anyone in his room.

The final point I make is transfers, and again I would agree with the submission made by the Lifestyle group. Let me give you a couple of examples just to press the point. I don't really know whether there would be a great concern about in-house transfers under the current legislation. If residents don't want to receive health care that the operator feels is required, I don't think they should be forced to receive that. I don't think they have to do that in hospitals; they shouldn't have to do it in retirement homes.

On the other hand, if by doing so they are putting their lives in danger, what is the responsibility on the part of the operator and especially on the part of the registered

nursing staff, whose standards of practice dictate that they would have to intervene in a situation like that? What do we do in a situation where someone refuses care and they need care? I would submit to you that that would put the operator and staff in serious jeopardy and liability. I think the legislation needs to be reviewed from that standpoint as well.

Let me give you a couple of examples. We have had in the recent past two male residents come to us. On the first one I would give you just a bit of background. He is a veteran. We had him living alone in an apartment but he had fallen and went to hospital. He recuperated somewhat, but came to us in a weakened condition. Because of the three meals a day, the daily nursing care and so on that we provide, within about six months his health had improved substantially. Unfortunately, also at the same time, he decided that he would return to his drinking. He had a drinking problem but was supposedly under control when he came to us. He would send for daily deliveries by cab from the liquor store and, unfortunately, when he became drunk, which was daily, as it turned out, he became violent.

One occasion occurred where we had to cancel and stop short the Christmas party because he came down drunk and was using his cane to attack the other residents, many of whom are very frail. I was approached personally by almost the entire resident population saying, "If you don't get that person out, that person who doesn't belong here"—because we had worked with this person to try to control the drinking and the violence—"then we're leaving." They didn't want to do that, but the point is that there are occasions when it is necessary to transfer an individual because of health problems or because he's a danger to himself or others, is not appropriate in the type of residential setting that we find in retirement lodges.

This dumping people on the street and so on is intolerable. I don't know of any situation of that myself. We certainly don't do it, and I don't think any operator who is a member of the Ontario Residential Care Association would even think of doing that.

In this case, we worked with the social service agencies and Veterans Affairs. Veterans Affairs said: "If you decide you want to drink and cause problems and so on, then you will go to this other place." But under the proposed legislation—and he certainly tried to resist. He said: "I'm not moving. I like it here." He was eventually moved. From a health standpoint, he's able to carry on, but he's in his own, self-contained apartment, not having to share meals, not having a communal, congregate living situation to deal with, and he's not disturbing other people as he was in our facility. I suggest that this type of situation comes up more than just occasionally. It needs to be addressed in the legislation. Those are my comments.

Mr Gary Wilson: Thank you very much, Mr Scully, for your presentation. It certainly was inclusive and I think very thoughtful. My colleague Steve Owens would like a question too.

I'd like to begin with a comment that what we're trying to do here, of course, is to make sure that all

residents in care homes have rights that are considered in their treatment. So when you mentioned the case you did right at the end, it suggests to me, at least, do we want to deny rights to all residents just to take care of that case if that is the only way—I assume that's the only way—of handling a case, that is, summarily removing the person? I think that's the balance we're looking for.

There are provisions, as you know, under the Landlord and Tenant Act to evict people from accommodation, and that does provide a setting where people's rights are taken into account. In more urgent cases, there are other steps that can be taken to control behaviour that is inappropriate or threatening both to the person and to other residents. Again, this is what we're trying to achieve in the bill, to bring in rights. I think you yourself alluded to the fact that there are cases where people are treated unfairly or inappropriately because they don't have the standing that the legislation now will give them under the Landlord and Tenant Act.

Mr Scully: In a situation where we're trying to cover off the problem of an individual, the odd case where someone, for instance, has a drinking problem and is violent, this type of thing, and how do we protect the rights of others, it's not just that I decide this is inappropriate. We have the medical adviser, the health team and the family, if there is one. In that case, there wasn't a family, but usually the family, as I think has been alluded to earlier, and we work out a solution which is appropriate for that individual in the expert and professional opinion of everyone involved. I knew myself that this was a problem we'd have to take care of, and probably by a discharge, but before that happened we'd try to work with the individual. People shouldn't be just summarily discharged. We should try to work with them, but if we can't, then there has to be another site or residence looked at.

1650

I mentioned earlier that I manage non-profit apartment complexes; they're covered by rent control. If this individual was in one of those suites and he was reluctant and wanted to fight me over moving out—we have cases every month where we have to deal with people who just don't want to leave, don't want to pay the rent. We can't have a situation like that in a health care setting, where it could take months to deal with a person who is getting worse and worse with alcohol and violence and so on. It's not that they're killing someone. The violence I'm talking about, they'll strike someone with a cane or they'll disrupt something. That might not even be sufficient under the current legislation to evict. He'd have a case in court, I would think, to explain himself. It's the reluctant party who has a health problem who disrupts the lifestyle of the other tenants or is a danger to himself that I'm talking about.

Mr Cordiano: I couldn't agree with you more wholeheartedly, and say that those are exactly the concerns we express about the legislation. I sure hope the government is ready, willing and receptive to amendments that would deal with those particular situations. At the very least, being unable to deal with a problem tenant in a way that considers the safety of other tenants in a

facility concerns us a great deal.

You touched on some other concerns we have with respect to care provision in facilities such as the one you operate and others. We're quite concerned about that, being able to distinguish between what is care and what is something along the lines of provision for health care services, how those are defined; what an emergency situation is. Those are all things we're quite concerned about. You pointed out the particular circumstance where smoking can be a problem but no one has a right of entry into that tenant's facility to deal with that tenant. I just want to support what you were saying and ask you how you might make changes to the legislation. We don't have time to go into that, but at some future point I think we're probably going to ask other witnesses who come before us to address some of these concerns with respect to how we might change it, if it's possible to do that within the framework of the legislation that's before us.

The Vice-Chair: Do you want to respond?

Mr Scully: I just want to say thank you to Mr Cordiano for the suggestion of perhaps offering some more detailed thoughts. When I was on the board of directors of the Ontario Nursing Home Association it was our practice, prior to legislation being introduced, to work with government and to express concerns we would have with proposed legislation. I thought that worked out fairly well, and perhaps there would be an opportunity to do that with this legislation as well.

Mr Cordiano: To reiterate, if you have recommendations around aspects of the bill you would like to see changed—and I know you addressed some in your brief—it would help us to know what might work in a practical, pragmatic sense so we could bring that forward and draft amendments that could go a long way towards doing that. We'll do that ourselves, of course, and we're hopeful that the government is receptive to these amendments, but on the areas around care provision, emergency access, some of those things, I might get in touch with you to ask for your advice on the drafting of those amendments.

Mr Arnott: Thank you very much for your presentation. I think the concerns you've expressed have considerable validity in this instance. What the government says it's doing is that there'll be new rights created in the area of tenancy, but what you're saying is that it might be at the cost of patient care.

You've indicated that rent controls are not applicable in this circumstance and that instead there should be some requirement that gives residents proper notice of rate increases. What would you consider proper notice?

Mr Scully: I certainly haven't heard that the intent of the legislation is to force the average rates charged downward because someone thinks they're too much, that too much is being charged, that people are being gouged and so on. I haven't heard that, so what I must assume is that the intent of the legislation is to make sure that situations like the Grenadier, that infamous place I mentioned earlier in Toronto where people got 18% rate increases all of a sudden, don't happen.

What happened in that case was that the people who

came in in the early days of that facility's operation were given special rates, but they weren't told they were special rates. They were given a special rate to entice them to come into the facility. This is the exact situation I refer to on the second page of my brief. After a couple of years they were still losing money but by then they were close to being filled, so they said: "Well, we've got to catch up now. We're just going to introduce an 18% rate increase."

That probably would have been quite acceptable had the tenants or residents known when they came in that at some future time—perhaps there would be a two- or three-year moratorium—the rates would have to go up, that you were being given a special rate. I think that is perfectly acceptable. That probably needs to be addressed, because there's a sensitive and appropriate way to handle the question of filling up a retirement home or giving a special rate for a room, if you're a mature home, that you might want to offer to one tenant, for any particular reason, that you might not want to offer to others. But as long as your increases per year to that tenant, as long as that tenant or resident is in that accommodation, are under the guidelines, then I think justice would be done in a case like that.

Mr Arnott: Do most new rest or retirement homes setting up feel compelled to offer a special reduced rate to entice people to come in in the initial instance?

Mr Scully: There are different ways of doing it. There haven't been, in the last three or four years, that many new facilities. There's an oversupply in the market, and as a result there hasn't been much in the way of new construction. But there are other ways of handling enticements, such as a number of months of free rent, things of this nature, so that the tenant or resident always knows what the rate is. The end result is the same, a reduced amount of money coming out of their pocket, but they know what the rate is.

The unfairness of all of a sudden announcing huge rate increases, which has happened, is the part that I think needs to be addressed by this legislation; not to protect residents from being given high rate increases while they're already there, because they have—except in maybe very rare cases in a remote location where they don't have another home to go to, but certainly in most cases—the opportunity to go to another facility if the rates are excessive. That's what keeps operators honest, in my opinion: the possibility of that happening. If they give a huge rate increase, then if it's unacceptable to the tenants they're going to lose a lot of tenants; there are lots of vacancies to absorb any people who want to move.

The Vice-Chair: Thank you very much for your presentation. We appreciate you appearing before the committee. Your remarks were certainly important and will be part of the considerations later on when we look at clause-by-clause.

This concludes the sittings of the committee for today. We are meeting tomorrow at 10 o'clock. As far as we know at this point, the presenters will be here. The committee is adjourned.

The committee adjourned at 1659.

Continued from overleaf

STANDING COMMITTEE ON GENERAL GOVERNMENT

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***Vice-Chair / Vice-Président:** Daigeler, Hans (Nepean L)

*Arnott, Ted (Wellington PC)

Dadamo, George (Windsor-Sandwich ND)

*Fletcher, Derek (Guelph ND)

*Grandmaître, Bernard (Ottawa East/-Est L)

*Johnson, David (Don Mills PC)

*Mammoliti, George (Yorkview ND)

Morrow, Mark (Wentworth East/-Est ND)

Sorbara, Gregory S. (York Centre L)

Wessinger, Paul (Simcoe Centre ND)

White, Drummond (Durham Centre ND)

**In attendance / présents*

Substitutions present/ Membres remplaçants présents:

Conway, Sean G. (Renfrew North/-Nord L) for Mr Sorbara

Mills, Gordon (Durham East/-Est ND) for Mr Morrow

Owens, Stephen (Scarborough Centre ND) for Mr Dadamo

Wilson, Gary, (Kingston and The Islands/Kingston et Les Iles ND) for Mr Wessinger

Winninger, David (London South/-Sud ND) for Mr White

Also taking part / Autres participants et participantes:

Cordiano, Joseph (Lawrence L)

Ministry of Housing:

Dowler, Rob, manager, planning and development policy, housing advocacy and planning branch

Irwin, Terry, senior policy adviser, housing planning and policy division

Clerk / Greffier: Carrozza, Franco

Staff / Personnel: Luski, Lorraine, research officer, Legislative Research Service

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Legislative Assembly of Ontario

Third Session, 35th Parliament

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Troisième session, 35^e législature

Official Report of Debates (Hansard)

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Standing committee on general government

Residents' Rights Act, 1993

Comité permanent des affaires gouvernementales

Loi de 1993 modifiant des lois
en ce qui concerne
les immeubles d'habitation

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STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday 20 January 1994

The committee met at 1001 in the Humber Room, Macdonald Block, Toronto.

RESIDENTS' RIGHTS ACT, 1993
LOI DE 1993 MODIFIANT DES LOIS
EN CE QUI CONCERNE
LES IMMEUBLES D'HABITATION

Consideration of Bill 120, An Act to amend certain statutes concerning residential property / Projet de loi 120, Loi modifiant certaines lois en ce qui concerne les immeubles d'habitation.

The Chair (Mr Mike Brown): The business of the committee this morning is to deal with public deputations regarding Bill 120, An Act to amend certain statutes concerning residential property.

FEDERATION OF METRO TENANTS' ASSOCIATIONS

The Chair: The first presentation will be the Federation of Metro Tenants' Associations. Welcome. The committee has allocated one half-hour for your presentation. We always appreciate at least some time to discuss that presentation with you during the 30 minutes.

Ms Deborah Wandal: All right. My name is Deborah Wandal. I hope you all have the presentation from the federation. As well, I've prepared an outline.

Just for those of you who might not be familiar with the federation, we are a grass-roots tenants' organization, and we do have thousands of tenant members across the greater Toronto area. We work with tenants to organize them in their buildings in order to help them deal more effectively with their tenancy problems. We also have a tenant hotline which we operate eight hours a day and on which we hear many of the problems that tenants are currently facing.

It's interesting that while tenants living in apartments in houses call us regularly as to what they can do to enforce their rights, we seldom heard from care home tenants, because they were all too well aware that they actually had no rights at that time.

I'd like to start by talking about some of the principles that we feel underlie this bill and that we feel are important in order to ensure adequate housing for all.

In order to create a town, a city or a province that is shaped by something other than the myriad self-interested concerns of its many inhabitants, we need a vision and a set of principles to guide us. We would like to congratulate the Honourable Evelyn Gigantes and the government for acting on their vision and standing by their principles.

It's easy to proclaim that housing is a right and that every person has that right to claim this basic dignity and self-respect. In support of such statements, Canada has joined as a signatory to a number of international covenants. However, people aren't sheltered by these noble sentiments, nor are they kept warm by the best of intentions.

Any trickle-down effect from these ideals to life on the

street must happen in the planning arena, we believe. There is no such thing as an innocuous planning issue, because all planning issues are social, political and human rights issues. They are shaped by our values, and they shape the dynamics of our daily lives. As such, planning is a process that interweaves principles and the pragmatic. To that end, the Planning Act anticipates the overlapping of interests between the province and the municipality. Under this act, the province has both the right and the responsibility to declare a provincial interest on issues which require a larger perspective.

Moving beyond the narrow self-interest and the status quo can be difficult to do at the local level. As Mr Mahoney of the Liberal Party has said in Hansard, December 6, "All that residents need to know and all that should concern them is the quality of life in their community." But if the residents' community isn't an inclusive one, then whose quality of life is being considered and whose is being ignored?

When you don't even have a community yet because you are homeless, who is taking your quality of life into account? Mr Mahoney talked about how he persuaded his constituents that psychiatric survivors needed a place to live. But what if no community could be so persuaded? Sadly, it is the case that residents' concerns usually extend only to what is and shouldn't be happening in their own backyards. What then about the quality of life of these psychiatric survivors? How are their needs taken care of?

Mr Stockwell has stated that there are excellent communities and that they have been created under the current system of planning priorities. But we don't believe that these communities have been created for the majority of constituents and we believe they don't meet the needs of the majority of constituents.

Mr Cordiano has remarked, and I think this is quite revealing as to whose needs are reflected in the current planning agenda, "Where people choose to live is important and is a personal decision. I think people should have the option to do that, especially when they're willing to pay extra for it."

We agree with Mr Cordiano that planning for people's housing needs involves providing a range of choices and balancing of interests. But if making choices is a personal decision, then why should municipalities further the personal decisions of those willing to pay extra by creating single-family enclaves for them, but do nothing to promote the personal decisions of tenants, single moms, refugees, newcomers?

By catering to the élitist choices of those who want to exclude everyone from their neighbourhoods who cannot afford to buy a house, municipalities are completely precluding many others from even realizing their much more modest choices. Apparently those who are not just willing but of course able to pay more for their housing

have more rights to choose and to have their choices respected than do those who pay less.

As a result of these exclusionary zoning practices, there is virtually no choice for many tenants, no opportunity to live on a residential street. Municipalities prefer, it seems, to deal with tenants' housing needs by segregating them in high-rise ghettos. Like apartheid, it works just fine, as long as you don't consider it from the perspective of the blacks.

Tenants' only alternative to high-rise housing seems to be housing developed under main-streeting projects. Mr Johnson has stated that he has no problem understanding that home owners might want to live in different kinds of areas, some quiet and suburban, some bustling and centrally located. Shouldn't tenants also be able to decide that they may not want to live in a high-rise tower? What if they want a backyard for their children or to plant a garden? What if they want to be part of the community as well?

We believe that municipalities are simply not listening to tenants. We have heard from councillors in Metro cities that in the past tenants have neither been seen nor encouraged to see themselves as contributing ratepayers with the right to put their interests before council. When tenants are not heard, municipalities don't act on their behalf and the tenants remain invisible.

There are many groups of people whose needs and circumstances have been largely invisible. Care home tenants are certainly one group. The current situation of apartments in houses is a perfect example of this invisibility and the inequality and second-class treatment such invisibility spawns.

Mr Stockwell has stated that he believes that the "individual choice of a neighbourhood to tolerate a violation works pretty well," but for whom? Certainly not for the tenant living in that unit, with too precarious a hold on their tenancy to dare to even try to exercise their rights, nor for the home owner who is waiting for the neighbour next door to complaint.

Now, it's true that municipalities generally haven't been closing down these units, but I think that this indicates and reveals a policy of inaction that is fuelled by municipalities' reprehensible complacency and refusal to meet their own responsibilities.

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The tenants living in these units and the home owners who install them are also constituents and they have the right to have their interests and needs heard. Where will these constituents live if they cannot remain in these units? How will Mississauga and Scarborough and London adequately accommodate people who may work in their cities, shop in their cities, make positive contributions to their communities in many ways but have no housing and have no way of having their housing needs addressed?

The municipalities were aware of these units and that many of the tenants were living in substandard housing and yet they did nothing. They blame tragic fires on the existence of the units themselves rather than acknowledg-

ing that they have done nothing to provide adequate, safe, legal housing for the people who are forced to live in illegal and therefore unregulated and possibly unsafe units.

We can only infer that municipalities sanction this limbo in which tenants and home owners are suspended. By refusing to deal with this reality, municipalities can ignore people's needs and interests and indeed pretend their wonderful communities work, except of course for those whose conveniently invisible needs can only be met through an underground economy.

The opposition has been using arguments against this bill similar to those raised around busing and forced integration: "You're not doing any favours for the people who live in basement apartments. There's going to be resentment in the community." This is a familiar refrain when anyone from some disadvantaged group enters an arena traditionally reserved for others, be it in the schools, the workplace or the neighbourhood.

Such arguments are apt, because what is being rationalized here is a form of discrimination, an indulgence in racism, classism and sexism. Some people euphemistically express this as a concern about the character of the neighbourhood, by which they mean keeping the right people in the neighbourhood and keeping the wrong people out. They base this fine-tuned distinction on people's race, income, age, disability, family status. They stereotype everyone who's a newcomer to Canada, a senior, a young person, a single mom, a low-income person or family working for minimum wage, a person with a disability or special needs.

When people think of tenants these are the groups they think of. That's fair enough. What isn't fair and what is discriminatory is the negative judgement and the rejection of them. People are afraid of differences and therefore homogeneous communities appear safe to those who fit in because they are familiar. But it doesn't take much to appear different, nothing much more than not owning property.

In the tenant movement we've experienced all of this before. A few constant themes have threaded their way through the struggle for tenant rights and protections. First, those with property must be completely protected against the propertyless classes because tenants are unruly, unkempt, even dangerous and simply do not live like other people. So they can't be trusted with rights; they will only abuse such power and everyone will suffer. These were the arguments that we have heard made in every battle: the battle for security of tenure, the right to privacy, to organize, the rights for roomers and boarders. The same dire warnings would be issued.

Secondly, there's the historical assumption that rights and powers must be vested only in those with property and that those without property simply don't deserve rights. Apartments in houses is yet another battle for tenants. Now it's not only about home owners or landlords wanting complete control over their property and its occupants but about home owners exercising complete control over entire neighbourhoods and their occupants.

Many argue that these neighbourhoods weren't planned for multi-unit dwellings. This is true, but it's also true

that they weren't planned as communities for single seniors or for families with one child or for three- or four-car families. In fact, any neighbourhood planned in the 1920s and 1930s or the 1950s and 1960s simply isn't responsive to today's needs. Many of them were planned for large families and, in contrast, demographics indicate there are now many smaller households which must be housed.

With 40% of marriages ending in divorce and a large percentage of women-led households suffering economic disadvantage, the nuclear single family is no longer the bedrock of our society. As well, changing household composition, variations on the extended family and diverse cultural norms create a whole range of housing needs.

This is the practical reality then: Huge areas are devoted to an underutilized form of housing which is now accessible to a dwindling percentage of the population. This housing needs to be reused in order to meet the current housing needs and access problems of many others. These neighbourhoods have outlived their usefulness in their current format.

Municipalities could learn a planning lesson from all these illegal units. They're an indicator of what people actually need and where they actually want to live. Now, if municipalities don't keep pace with changing demographics and plan for the real housing needs of their constituents, the province has a responsibility to take on that role.

We believe the province has done this by using Bill 120 to open up choices. It allows choices to be made, as permissive legislation; it does not dictate, as has been suggested. It does give each home owner the right to a measure of control over their own property but it does not give anyone the right to control what will happen in the entire neighbourhood.

It's something of an irony that the NDP government's Bill 120 really allows the market to dictate what will happen. What will be the demand for apartments in houses, what will the supply be? If there is no demand, municipalities won't have to worry about a duplexing explosion, but if there is a demand and a corresponding increase in supply, this will mean that there was a need for housing which municipalities just weren't planning for. It will also indicate that there was a desire on the part of owners to install these units, leading us to conclude that perhaps there was only a vocal minority rather than unanimous opposition to this bill.

Perhaps these single-family neighbourhoods are becoming less viable and unable to sustain themselves through market demand. Wanting to preserve the character of a single-family neighbourhood is a little like feeling nostalgia for the air of refinement that once pervaded the hallowed halls of learning before they allowed the plebs, which is a phrase used in the House, to get a higher education. No doubt something was lost with the intrusion of such ordinary folk, but renewed economic and social vitality in neighbourhoods, continuity of family structures, these are what can be gained through inclusionary zoning.

Back in 1990 the Liberals themselves prohibited

municipal bylaws that distinguished family households from households of unrelated people because such distinctions were discriminatory. While there were dire predictions that untold numbers of unrelated people would live together, this had to be dealt with as a potential problem, but no litany of such possible repercussions could justify the continuation of discriminatory practices.

Bill 120 moves tenants' housing rights another step in the right direction. For many tenants, their choices as to where they might be able to live, however, are still very limited. We believe this bill just doesn't go far enough. Tenants can still be segregated by exclusionary zoning on the basis of their particular housing needs. Care home tenants who are going to be helped by other portions of this bill and rooming house tenants will still not have the right to live in residential neighbourhoods.

If equality of all tenants is an informing principle of this bill, then integral to that equality is the right of all tenants to access housing and live where they please. More than one additional unit, as well as rooming houses and care homes, should be allowed within the existing envelope of residential homes, provided that safety and property standards can be met. The limits on both the availability and the range of housing types in residential neighbourhoods must be removed and tenant housing "as of right" allowed in all residential areas.

I have some quick comments to make about affordability and standards. We actually don't believe, unfortunately, that this will provide necessarily affordable housing, in large part because while there is token coverage under the Rent Control Act, there is no provision for registering these units, and it's been quite clear that when units aren't registered, there's no way for tenants to actually ascertain what the previous tenant was paying, there's no check on landlords simply increasing the rents as one tenant moves out and another moves in.

With respect to standards, we are concerned that municipalities that are so adamantly opposed to this bill are going to do nothing to try to cooperate in realizing its intent. We are concerned that some municipalities may make a concerted attempt to actually enter units and use the opportunity to close down any unit that doesn't comply with any kind of property standard. They have this power currently under the Planning Act. We want provincial monitoring to ensure that there is not such a selective enforcement of bylaws with respect to apartments in houses.

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Alternatively, we are also concerned that there may be some municipalities that are going to wash their hands of apartments in houses and decide to do nothing, and not meet their obligations to respond to requests for inspections by tenants living in apartments in houses. These tenants will then be left without recourse to secure and well-maintained housing. Should this occur, we want the provincial government to assume the inspection and enforcement role of that municipality.

Under the Residential Rent Regulation Act, there were provisions that empowered the province to step in when municipal enforcement mechanisms were inadequate. We think these provisions should be transported into the

RCA. We would also like the Rent Control Act regulation that requires damp-proofing of basement units—and currently this provision only applies in unregulated areas of Ontario—we'd like this provision to be included in the regulations of the Planning Act as a standard which each municipality's own bylaws must incorporate.

We are opposed to search warrants because we believe, and it's certainly been our experience, that tenants who live in legal units are in fact constantly trying to get inspectors to come in and look at their places and make work orders for compliance. We don't believe that tenants will refuse entry to inspectors if they're no longer fearful of eviction due to zoning violations.

We would also like to see a public education campaign with the passage of this bill because there are going to be many landlords who are not aware that they have obligations. There are going to be many tenants who are not aware that they have rights and obligations. This is opening up a whole new field of people who are entering the landlord-tenant relationship for a first time and they need to become familiar with the legislation.

The final remark that I'd like to make about apartments in houses is that we found that many of the arguments from the opposition were about what would happen if we pass this legislation or if we don't have incredibly stringent regulations or we don't give landlords unfettered power.

These are all worst-case scenarios that are being presented, and such events, sometimes tragic, do happen. However, the parameters and focus of any piece of legislation or bylaw do not get set by these worst-case scenarios. We don't set speed limits at 10 kilometres an hour because people may get killed at any speed higher than that. While fire safety officials recognize that someone may break a leg jumping from a window 20 feet up, none the less we don't require fire escapes at that height.

Similarly, we shouldn't access legislation because every house in Ontario may turn into a duplex and we shouldn't give all landlords the right to simply remove a tenant because a few tenants may come from hell. Instead we make legislation that weighs certain rights and freedoms against necessary protections and controls and that is based on what we can reasonably expect from people without resorting to discriminatory generalizations.

Do I have about two minutes?

The Chair: No, you have about nine minutes.

Ms Wandal: Okay. I'd like to make a couple of comments about care homes. Again we laud the government for standing by its commitment to the equality of all tenants under the law. Believing that a tenant is a tenant is a tenant and that all tenants are entitled to the same rights and protections is definitely a step in the right direction.

We have, however, a real concern about the meals exemption and we believe that the fact that charges for meals in care homes are not covered by the Rent Control Act essentially abandons tenants in care homes to the similar kinds of situations they faced when they weren't covered by the Landlord and Tenant Act. When they have no control over their meal costs and when they are unable

to pay an arbitrary increase in those meal costs, then they are subject to the same kind of constructive eviction that existed when the Landlord and Tenant Act didn't apply and landlords could actually just throw them out.

This loophole will create a desperate situation for the many tenants who have no cooking facilities or who, because of age or disability, are simply unable to shop for or prepare their own food. Exempting meals places them in a vulnerable position. Food becomes the lever the landlord can use to keep tenants compliant and uncomplaining about other abuses of their rights.

We believe that it's the low-income tenants and others, such as seniors, the disabled, who are most vulnerable and are most drastically affected by this provision. It's also the case that as meals are still covered by the Rent Control Act for boarding houses and rooming houses, there is no practical reason why meals cannot similarly be covered for care home tenants.

Our other concern is that the fact that meals are exempted for care home tenants provides a strong incentive to rooming house and boarding house landlords to consider themselves a care home. We believe the legislation actually creates a large window of opportunity for landlords to carry out this miraculous conversion before the RHPA comes into effect with the proclamation of this bill.

Those are my only comments. I can refer to other portions of the presentation in questions. Thank you.

The Chair: Thank you. We have two minutes per caucus, probably about one question each.

Mr Bernard Grandmaître (Ottawa East): One question each?

The Chair: I'm just guessing, but two minutes isn't a long time.

Mr Grandmaître: Very good. Thank you. You seem to put a lot of blame on municipalities for not respecting their own bylaws, zoning bylaws or planning laws, official plans. You also mention that municipalities have power under the Planning Act to have access to these illegal apartments or accessory apartments. Where in the Planning Act do municipalities gain this power?

Ms Wandal: Under both section 1 and section 34 there are provisions for inspectors to go to a unit and say that they wish to enter. If they are refused entry, they have the right to get a search warrant and to search the place in order to determine—

Mr Grandmaître: So automatically people will say, "Get a search warrant." They won't welcome people. I'm sure you realize this.

Ms Wandal: Yes.

Mr Grandmaître: There are 100,000 of those units in the province of Ontario, but they say that 40,000 of them are located in Toronto. A lot of them, maybe 50% or maybe 75% of these units, were built without a building permit, so it doesn't give the municipal building inspector any access to find out if the plumbing, electricity and so on and so forth, the safety of these people is looked after.

I think municipalities should be given more power to

enter these units and to see that they respect at least the minimum housing criteria. If municipalities are given more power, more people will be thrown on the street because they're living in illegal apartments—

The Chair: And the question is?

Mr Grandmaître: —what will we do with these people?

Ms Wandal: I think that given the Land Use Planning for Housing policy statement, which is still in effect and which was brought in by the Liberal government, there is a real directive in there to be proactive about maintaining and preserving housing, upgrading housing, rather than getting rid of it.

Municipalities should be putting pressure on landlords to comply rather than simply using the opportunity to close units down. There's a very broad spectrum of what isn't up to standard and then what is completely unlivable and, while a place may not meet every standard, that doesn't mean that over time a landlord cannot bring it into compliance and that's what the municipalities should be working on doing. As I said, we believe that once these units are legal, tenants will be asking inspectors to come out and check the units. There won't be a matter of trying to get into a unit that a tenant is reluctant to give access to.

Mr David Johnson (Don Mills): I don't know how these municipal rascals get to hold their position, you know, when you consider they don't meet the needs of the majority of the people, but then I guess, as you say on page 3, it's one person, one vote and who knows how people are going to vote.

Ms Wandal: And very few vote.

Mr David Johnson: I wonder why it's all or nothing in this situation when municipalities have come up with different proposals. The city of Hamilton yesterday, for example, had a clear policy, as I understand it, on accessory apartments. They didn't allow them in certain circumstances and they allowed them in other circumstances. Many municipalities, such as the one I represented, looked at owner-occupied units.

I might say that many people do rent houses and have backyards. It doesn't have to be a basement apartment. They can rent the whole house or they rent part of a duplex or whatever and there's absolutely no problem and that works quite well. Why is there not the possibility to allow municipalities to deal with this in terms of their local circumstances?

Ms Wandal: I would say that again under the Land Use Planning for Housing statement—that came out in 1989—municipalities were told they had a two-year period in which to amend their official plan, amend their bylaws, take clear, positive steps in the direction of fulfilling the provisions that were in that policy statement. Two years came and went and there was a mere handful of municipalities that had even begun to look at making the appropriate changes.

I agree with you, Hamilton certainly has done. They have a very progressive planning department. They've been pushing for this and they in fact did take some steps to allow apartments in houses, but that is not sufficient.

There were so many municipalities that absolutely dug in their heels and said, "Never will we do any of this," I think that necessitated—it's four years after that policy statement came out, and municipalities by and large have done nothing.

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The one other point I'd like to make is, you're right, people can rent a whole house. That is often much more expensive than renting a unit that actually meets your own needs. Many people don't need a whole house. That's part of the issue, that these areas are being under-utilized, and I think you yourself mentioned that in the House, that in East York those homes no longer house the numbers they once did.

Mr David Johnson: The two-bedroom bungalows there, right?

Mr Gary Wilson (Kingston and The Islands): Thanks very much for your presentation, Ms Wandal. It's very informative and certainly thorough in its approach. I'd like to ask you about one thing that has been raised, and that's the issue of owner occupancy and what your view is on the suggestion that accessory apartments should only be in places that are owner-occupied.

Ms Wandal: We have a very simple position that we just don't think that is either necessary—it's almost as though tenants can't live without some kind of supervision, that there has to be like a chaperon on the premises to make sure that they're never doing anything wrong. It's simply ridiculous.

We really believe you can have tenants living next door to you and there is no reason to necessarily think that they are going to be any less good human beings, that they are going to have any characteristics that will make them difficult neighbours, than if somebody moved next door to you and owned the house and then you could never do anything about the issue of a problem over a fence or a driveway or whatever.

Mr Gary Wilson: What about in areas like around universities? Have you looked at that issue at all?

Ms Wandal: We actually haven't addressed that specific issue, but I think that is covered generally by our belief that, in residential areas, any person who wants to live in a residential area, whatever their housing needs are, whatever specific kind of housing meets their financial ability or their particular family relationship, if it's offered, if someone chooses to build it or provide it in that area, they ought to be able to live there. So if there are places around the university that are willing to house students, they should be housed.

Mr Gary Wilson: Also, I was interested, you mentioned an information package you'd like to see as part of this bill. Could you elaborate on that?

Ms Wandal: Yes. The Ministry of Housing actually does quite a good job of providing all kinds of information to tenants and to landlords about what their rights are, what steps they have to take. I think landlords need to know that there is a process for evicting tenants, that, contrary to myth, tenants get evicted all the time and there is a way of doing it and it doesn't take nine months, it takes six weeks to two months. They need to know that

there are legal means they can take so they're not as ready to jump in and try illegal tactics. Similarly, tenants need to be aware that these places are in fact now legal.

The Chair: Thank you for your presentation. As you know, clause-by-clause on this bill will commence in March.

CITY OF MISSISSAUGA

The Chair: The next presentation, the city of Mississauga, Mr Calvert. Good morning. You've been allocated half an hour. If you would like to introduce yourself and your colleague for the purposes of our Hansard recording, you may begin.

Mr John Calvert: Thank you, Mr Chairman. My name's John Calvert. I'm the director of policy planning in the planning and building department for the city of Mississauga. This is Ron Miller, also in the planning and building department. You saw him yesterday.

Mr David Johnson: Or his twin brother.

Mr Calvert: Yes. I'll be building on what you've heard from the mayor of Mississauga, the fire chief and the Peel coalition that made a presentation that Ron was part of yesterday. We hope to address just the issues that haven't been covered. I apologize up front if there's any repetition on behalf of what's already been said, but I'll try to stick to the land use planning issues that our department and our city council have addressed.

I guess first, the city of Mississauga has been involved with intensification and specifically accessory apartments since the policy statement, the Land Use Policy for Housing statement that came out in 1989. We have followed through that and have responded to that. We've responded in a report, through our city council, on the consultation paper first and then on Bill 90, and we'll be providing this committee with a report as to the recommendations our council will be dealing with. That report goes to our planning and development committee next Monday, so we'll be forwarding it to this committee once our committee has dealt with it.

I think it's fair to say up front that Mississauga supports the concept of intensification and supports the concept of accessory apartments in particular, with certain restrictions and regulations that we will identify.

The approach we want to take this morning: As I said, I'll just give a bit more of an overview and Mr Miller will go through the specific recommendations, one by one, that our planning and development committee will be dealing with on Monday, which represent the collective position of the city of Mississauga regarding the initial comments on the land use housing policy statement on Bill 90 and now on Bill 120. So we'll have a collection of all the recommendations.

As I said, our involvement has been right from the start with the residential intensification study. We responded to the requirement by the policy statement to study where areas in Mississauga were suitable for various forms of intensification. We retained a consultant and undertook the residential intensification study which, when it concluded, recommended that accessory apartments be permitted in the zoning bylaw throughout the city but be restricted to certain zones in certain detached

areas and semi-detached areas.

It recommended that accessory apartments be prohibited in small lots, small-lot detached and semi-detached, in all town houses, multiple-family and apartment dwellings on the basis that the land use activity in these areas is already quite intensive and there's less opportunity to physically accommodate the unit.

I guess overall our concerns were addressed in that report and, as Mr Miller will get into in a few minutes, we supported the concept subject to the proper location throughout the municipality and subject to certain amendments to the legislation that would reduce the land use, the zoning, financial, fire, safety and property standards aspects of the impact on the community.

We're in a position now that we've looked at it; we've identified all of the issues. As I said, we have this report going to our planning and development committee on Monday, which will then be forwarded to this committee, and Mr Miller now will go through the specific recommendations that will be discussed by our committee.

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Mr Ron Miller: As my colleague mentioned, I'd like to again reiterate that Mississauga's not opposed in principle to accessory apartments, but we seek certain amendments to the legislation itself as well as other pieces of provincial legislation to reduce some of their land use, financial and property standards impacts.

First of all, we suggest that because municipalities such as Mississauga, and also throughout Ontario, do not have the transit system as is available in Metropolitan Toronto, we have higher car ownership rates and higher demands for parking. Because of the small amount of parking available in our town house complexes as well as in areas where we have small-lot detached and semi-detached dwellings, we recommend that those forms of housing be exempted from the bylaw.

For all other forms of housing, we suggest that the Municipal Act be amended to permit licensing or some form of registry of accessory apartments. The issue here is that these apartments are phantom units. We don't know they exist or where they exist. We have no effective means of enforcing the fire code or the building code, as well as the zoning bylaw. Licensing or some form of registry will allow municipalities to do that in an even, proactive manner.

We've been advised that there is no provision in the Landlord and Tenant Act to enable a landlord to evict a tenant if the unit must be closed because it cannot be brought up to standard. Consequently, we recommend that the Landlord and Tenant Act be amended to include a requirement that all rental premises, including accessory apartments, be required to comply with all municipal statutes, regulations and bylaws.

Dealing with finances, accessory apartments are specifically exempt from the Development Charges Act. We have calculated that in Mississauga alone this will mean a loss of \$10 million in development charges. Consequently, we request that the Development Charges Act be amended to permit municipalities to impose a development charge on all accessory apartments.

In terms of the Assessment Act, the Assessment Act does not currently address or assess accessory apartments as an additional dwelling unit. We request that the Assessment Act be amended to assess accessory apartments in a similar fashion to duplexes. We believe this would be a fair and equitable treatment of houses containing accessory apartments.

You've probably heard a lot of municipalities request owner occupancy. It's believed that by ensuring the owner resides in a house containing an accessory apartment, undesirable behaviour will be controlled and the property standards will be maintained. We agree, however, with the position that such a requirement is not only unenforceable but also unworkable and perhaps undesirable in practice.

The issue here is really the issue of maintaining appropriate property standards. It's very difficult for municipalities to enforce their standards and obtain prosecutions in court. My legal staff advises me that when prosecutions are obtained, the penalty is merely a slap on the wrist and considered a cost of doing business by the landlord.

The city of Toronto and the city of Windsor have previously obtained specific provincial legislation which would enable them to improve and strengthen their property standards and also obtain prosecutions in the courts. Consequently, we recommend that all municipalities be permitted to strengthen their property standards through private municipal legislation enacted by this province. We believe this would be a suitable, effective means of addressing the whole issue of property standards without getting into the area of owner occupancy.

You've already heard from our fire chief on the concerns of fire safety, so I'll not belabour the point that we believe the fire code should be amended to specifically address accessory apartments. As well, I believe he may have recommended to you the requirement for a sprinkler system.

A close reading of those regulations published under Bill 120, the predecessor of this act, indicated that existing accessory units would not be required to comply with all aspects of the Ontario Building Code. We're requesting that any regulations pertaining to Bill 90 require that not only future accessory apartments but also existing accessory apartments be required to comply with the basics of our Ontario Building Code.

As I mentioned, again dealing with property standards, our legal staff have indicated that it's a very lengthy, cumbersome process to obtain convictions under the Planning Act related to property standards bylaws. We suggest that the Planning Act be reviewed in this regard to shorten the process related to obtaining convictions with respect to property standards. Again, it's an effective means of addressing property standards without getting into the whole area of owner occupancy.

In order to enforce all these standards and regulations, we need to improve somewhat or facilitate a reasonable power of entry by municipal staff. As you know, under the Planning Act as it currently stands, the owner or the occupant may refuse power of entry to an inspector, who is then required to obtain a search warrant. To assist in

obtaining a search warrant, we would request some guidelines from the province in terms of the evidence necessary to obtain a search warrant and obtaining any prosecutions under the act.

In addition to these legislative changes I've already mentioned, we request certain amendments to Bill 120 and its related regulations. As I mentioned yesterday, any public meetings required to implement the legislation within our zoning bylaws and our official plans will be a fait accompli and will be deemed largely a farce by the public who are attending. We request that the Planning Act waive the requirements for public meetings to implement this bill.

I also mentioned yesterday that there's a conflict between the Building Code Act and the Planning Act. The Building Code Act does not require inspectors to advise occupants that right of entry may be refused whereas the Planning Act does. We'd request that those two acts be rationalized so that there's no internal conflict. It would greatly assist our inspectors.

The whole implementation process, enforcement and inspection process that municipalities will be required to undertake will result in some costs to municipalities in both labour and other means. We would request some form of grants to the municipalities to offset the implementation and enforcement costs related to this provincial legislation.

To mesh the requirements of this bill with all the various municipal definitions of detached, semi-detached and town house, we would suggest simply that municipalities be allowed to use their own definitions for those types of units. As one of those persons who often writes zoning bylaw amendments, I can tell you that it's very awkward to mesh one piece of legislation with another piece of legislation, especially when these definitions or these terms are used throughout a zoning bylaw.

In terms of parking, again we would request that at least one off-street parking space for the accessory unit be required and that municipalities not be compelled to permit on-street parking to satisfy this requirement or to permit the paving over of front yards to accommodate the parking space.

The definition of a residential unit in Bill 120 permits egress to the outside via another unit. Our fire department has recommended that the definition of a residential unit in the bill be revised to meet all the fire code requirements so that the accessory unit will have egress directly to the outside of the building or some other means of fire-protected egress.

Dealing with garden suites, Mississauga generally supports the legislation, subject to some modifications to ensure that the garden suites will be subject to the Building Code Act by prohibiting the use of mobile homes and trailers and that the garden suite definition not permit an accessory apartment within them.

Finally, with respect to the unregulated care homes, Mississauga generally supports in principle the legislation. Our only concern is the administration of applications under the Rental Housing Protection Act. I am one of those who reviews applications now under that act. To

do so, I require data on household incomes and vacancy rates, which are supplied by CMHC. To the best of my knowledge, those data are not available for unregulated care homes. We request either that those data be made available by the province or, if that's impossible, that the unregulated care homes not be subject to the Rental Housing Protection Act.

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Mr Ted Arnott (Wellington): Just a brief question: Have you any estimate of what this downloading is going to represent in terms of cost to your municipality if indeed there's no additional provincial financial assistance for the associated costs that you're going to be looking after as a result of this bill?

Mr Miller: As I mentioned, in terms of development charges alone we would have a loss of \$10 million. We haven't yet calculated the exact administration costs.

Mr Calvert: We expect, as part of the legalization process, inspections and other forms of administrative operations will take place, and that could be quite costly in terms of staff time and other requirements.

Mr Arnott: What about the effect of accessory apartments, assuming there's an expansion of them in numbers, on your sewage capacity as a municipality? Has that been looked into at all?

Mr Miller: In Mississauga sanitary sewers and water services are the responsibility of the region of Peel, therefore we haven't looked at them. It's merely a matter of jurisdiction.

Mr Arnott: I think in our area, in Wellington county, the riding I represent, where we have a number of small municipalities almost at their limit for sewage capacity, this represents a problem. I don't think there's been any provincial government study as to what effect this may have, assuming an increase in the number of accessory apartments, and that concerns me.

Mr Calvert: Yes, we would have to look at that in each area, to look at the capacity and certainly the older parts of Mississauga, to see if there's sufficient—that's just one of many services that we would have to look at in the hard services. We haven't done it, to answer your question, but it would have to be done to make sure they can be accommodated.

Mr David Johnson: You mentioned about egress directly outside and I wasn't just clear on that. Are you suggesting that every basement apartment should have an exit directly outside?

Mr Miller: Yes, either an exit directly outside or else a fire-protected exit through another unit.

Mr David Johnson: Okay. You also mentioned that all these units should comply with the Building Code, and I just wondered in Mississauga what the biggest problem would be currently in terms of complying with the Building Code.

Mr Miller: For the individual units, of course, we have no knowledge because we don't know where they exist or have access to them. I am only advised by our building inspectors, upon their close reading of the legislation or the regulations under the former bill, that the requirements for existing units did not meet Building

Code requirements.

Mr Gary Wilson: Thank you very much, Mr Calvert and Mr Miller. Nice to see you back, Mr Miller. Unfortunately, we've so little time to discuss what I consider to be a very reasonable approach to the issue. There's a lot that I think we agree on on this. I think we can clarify a few of the things. For instance, all accessory apartments would have to meet the Building Code requirements at the time of passage of the bill, so that depending on what your regulations said, your property standards could be at the OBC requirements, for instance, and that would guide the legality of the units.

The second issue you raise has to do with the parking. I would like a member of the ministry staff to come forward to tell you about that just so we have that clear. If you don't mind, Mr Chair, could I ask James to do that?

The Chair: Certainly. It's your time.

Mr James Douglas: I'm James Douglas. I'm from the Ministry of Housing and I would like to clarify what the draft Planning Act regulations say about parking. Under the draft Planning Act regulations, municipalities would still have the authority to prohibit on-street parking. That was never in doubt. What the regulations do say is that if on-street parking is permitted, then on-street parking spaces could be considered towards the required parking for the converted house. However, municipalities can prohibit on-street parking altogether.

When it comes to front-yard parking, there's nothing in the regulations that prohibits a municipality from requiring that a certain percentage of the front yard be landscaped. In other words, a municipality can require that a driveway be a certain width or a certain percentage of the lot frontage. There is no danger that the regulations would allow home owners to pave over their front yards. The legislation does say that the driveway space between the house and the street can be used as part of the parking requirement but, again, the actual width of the driveway would be regulated by the municipality.

When it comes to the number of onsite parking spaces required, the proposed standard was basically two for a converted house. It is recognized that this is a fairly controversial aspect of the regulations and staff have been in contact with AMO and others about developing an appropriate standard that would meet the needs of municipalities plus other concerned persons.

Mr Gordon Mills (Durham East): Has all our time gone, Mr Chair?

The Chair: Your time is gone, Mr Mills.

Mr Mills: I never heard you mention how much time we had.

The Chair: There's a clock on the wall, Mr Mills.

Mr Grandmaitre: Tell me a little more about your development charges or what you're proposing to do in Mississauga. Will you be asking for a private member's bill to permit these development charges for accessory apartments?

Mr Miller: Yes. As I mentioned, the development charges legislation expressly exempts accessory apart-

ments from development charges.

Mr Grandmaître: At the present time.

Mr Miller: At the present time. We would request that legislation be amended to permit.

Mr Grandmaître: And this is supposed to go before council on Monday, did you say?

Mr Calvert: Before planning committee on Monday.

Mr Grandmaître: What is your recommendation on development charges? How will they work? They will be different from lot levies, so explain to me the proposed development charges for these accessory apartments.

Mr Miller: Basically, under the legislation the municipalities are allowed to charge development charges to offset the costs of capital construction related to growth. What we would do is divide the costs of the growth by the number of units. The result would be that the accessory apartments would be paying for their small fair share of the capital growth in the city. These services include all municipal services, municipal transit, parks and recreation services, library—

Mr Grandmaître: The soft and hard services.

Mr Miller: The hard services provided by the region and, as well, for education purposes if the issue of education is resolved in the courts.

Mr Grandmaître: Tell me—you can take a guess—what would be the normal development charges for, let's say, a 750-square-foot or 800-square-foot accessory apartment? What would be the development charges on such an apartment?

Mr Miller: I really couldn't say. I'm not close enough to the actual costs to give you an estimate. I'm sorry, I can't answer that question.

The Chair: Thank you for appearing this morning. As I've mentioned to others, the clause-by-clause examination of this bill will commence in the week of March 6. 1100

CITY OF WATERLOO

The Chair: The next presentation is the city of Waterloo, Mayor Brian Turnbull.

Mr Brian Turnbull: Thank you, Mr Chairman. It's a pleasure to be invited down here today.

I'm going to address Bill 120 almost entirely from the point of view of a university city. I believe that you've had other delegations from other municipalities that I'm hopeful have addressed the problems that this bill may cause to what I'll call an ordinary city. I've taken it upon myself just to address the problems of university cities, and they are, in many ways, significantly different from normal planning problems. I brought down a little handout. Has that been distributed? Yes.

The city of Waterloo is very proud to be the home of two important universities: the University of Waterloo and Wilfrid Laurier University. We have more university students per capita than any other city in Ontario, possibly in Canada. It is the city's university era. The universities are making us what they are today and we're very proud to have them. They do cause us some problems and I'm going to outline some of those problems to you.

For many, many years, about eight to 10 years, we have worked very hard at attaining two goals: One is to keep the neighbourhoods in the core and around the universities as attractive locations for family living; secondly, to encourage an adequate supply of student housing that is affordable, healthy and safe.

In many cases those two goals conflict and the challenge has been to achieve a balance between them. For at least eight years or so we have been working very hard to achieve that balance. We had a student housing task force. All of the players, students, university administration, city hall, neighbourhood groups, landlords, were involved in the task force. The successor to that task force is still meeting monthly to iron out issues as they come forward.

We have achieved many successes. It has been extremely frustrating because it is very difficult goal to achieve this balance. It's highly controversial and we have spent a great deal of time, as a city organization, trying to wrestle with these problems.

One of the successes that we have achieved: We got into what we called our neighbours program. The program consisted of a neighbourhood guide which goes to every household. The neighbourhood guide outlines the key bylaws that affect a neighbourhood, and anybody in the neighbourhood is asked to advise us if they feel their neighbours are not living up to these rules. We also have a mediation process as part of this program. I believe it was in 1991 we won a national award for an innovative municipal program based on this program. I have extra copies of this if anybody is interested.

We've been working very hard at this for eight years. Typically, when the family goal wins, the student housing goal loses and vice versa. That's been our typical, I won't say our practice but our experience. This bill is somewhat unique in that it would have an equally negative impact on both of those goals. I've just outlined I think five reasons why that would happen.

It would allow concentration of students in neighbourhoods close to the universities. At some point the balance in that neighbourhood tilts. People who are in families decide they don't want to live there any more. They leave the neighbourhood, leaving the students to take over the neighbourhood. This hasn't yet happened in Waterloo and we're very pleased with that, but it is in danger of happening. It has happened in Kingston. You may have heard of the student housing ghetto, as they call it, in Kingston. Kingston and all the rest of the Ontario university cities are trying to avoid that type of situation.

We wish to continue to try to achieve the balance between the students and the families. The legislation would remove the tools that we currently use to achieve this balance. Because it's important to the students to be located close to the universities, they would tend to move in and the existing stable neighbourhoods would be at risk.

In neighbourhoods close to universities, modest housing is rented to students at rental rates that are not affordable to low-income people. As a result, the low-income people are edged out of large portions of our city and of many university cities. Although the legislation

would permit the creation of additional units, those units around universities would not be affordable as typical households because the university students can afford—when you put five in a house at \$250 or \$300 per bedroom, that adds up to much more rent than your normal family can afford for that typical three-bedroom house.

Thirdly, the bill would significantly hamper our ability to license lodging houses. We have been licensing lodging houses since about 1987. We now have over 700 dwellings. There are about 650 dwellings that are licensed and another 60 or so that are in the works. We have over 700 dwellings that either are or will be licensed in the near future. This was another program that came out of the student housing task force. It is strongly supported by all of the players: the landlords, the students, the universities, the city, the families and the neighbourhood associations. All the players in the city that are interested in student housing like the licensed lodging house approach.

The licensing bylaw protects the health and safety of the tenants particularly, and it somewhat protects the interests of nearby resident families. It's used as a guideline for universities, students and the students' parents, particularly in that first year at university when they come to town and they try to get good accommodation for the freshman students. The universities will recommend a list. In order to get on that list, you have to be licensed. There are many other advantages to that which I won't go into in any detail.

Item 4: There are two specific safety issues that we could not enforce if we complied with the provisions of Bill 120. We feel that particularly in a subgrade situation where you have students living in a basement, it's important to have a second exit. My understanding of the bill is that it not only does not require the second access, it allows the first access to be through somebody else's dwelling. That, to me, is so wrong it's hard to believe that it's in the bill. It's very unsafe from a fire point of view.

I have attached to my outline a letter which I received yesterday from one of our fire prevention officers, going into in much more detail than I am able to some of the physical problems that we now enforce and that we would not be allowed to enforce under the terms of this bill.

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Secondly, under item 4, a typical three-bedroom house that now accommodates students would house up to five students. Many students, if you think of it, would have a stereo in their room, a microwave, a computer. This bill would allow that number of students to increase to 10, and my understanding is there's no requirement that the wiring in the house be upgraded. This is potentially a very unsafe situation.

In conclusion, this proposed legislation will adversely affect the quality of living for families in many neighbourhoods in university cities. It will permit unsafe properties to be rented to students. Please defeat it and allow us to continue to work for a balance in our neighbourhoods in university cities.

The Chair: Thank you very much for a very good and concise presentation.

Hon Evelyn Gigantes (Minister of Housing): Thank you, Mayor Turnbull. It's good to have your presentation. I'm familiar with the kinds of situations that arise in towns that have post-secondary education institutions. There are four in the city of Ottawa, two colleges and two universities, because we have a lot of French-speaking residents in Ottawa too. So I'm very interested in the issues that you raise.

I'd like to understand first of all, could you explain to me what the definition of a lodging house is in your bylaw?

Mr Brian Turnbull: We do not require a lodging house licence for people who have three or fewer students living in their dwelling; four or more, we require a licence.

Hon Ms Gigantes: If I were the owner of a property that had students and was licensed under your lodging house provisions, why would I bother to go through the building code requirements, the fire and safety requirements, to create a new unit when I could rent out the space without subdividing the house, when I could rent out as much as I could get in the market as long as I was meeting your bylaw requirements? Why would I do that?

Mr Brian Turnbull: I'm sorry, could you rephrase that?

Hon Ms Gigantes: Yes. If I had what you've described as a three-bedroom house, if I owned it and there were five students in it, why would I bother creating a second unit? That would just cost me money. Obviously, if I were licensed under your lodging house, I would be renting out to students without having to meet any of the extra requirements that the building code would require now for the creation of another unit within that house. Your bylaw would already allow me to rent out, meeting your bylaw standards, so why would I be interested in creating another unit?

Mr Brian Turnbull: Our licensing bylaw would limit you to either five or six students per unit.

Hon Ms Gigantes: Yes.

Mr Brian Turnbull: Under this bill you can double the number of units on that lot.

Hon Ms Gigantes: Yes, but you—

Mr Brian Turnbull: So we're now talking either 10 or 12 students on that lot.

Hon Ms Gigantes: If you could fit it in. But why would I try to do that? I would have trouble fitting it in, in most instances. I find it hard to understand the argument that says students rent in bulk, as it were, in a property and landlords are now going to try to jam in twice as many students. I don't think that's the case at all, because there will be extra expense involved in trying to create a new unit. If I've got six students in a house with three bedrooms, that's probably as much as I'm going to be able to jam into the house.

Mr Brian Turnbull: But then you can add a second unit on in the backyard and the cost of the second unit is more than justified by the \$1,500 in rent you're going to

get from five more students.

Hon Ms Gigantes: I wouldn't be able to add a unit on in the backyard under this legislation; I'd have to go to your municipality and seek some kind of change in the zoning to do that. This legislation would permit me to create a unit within the house: one unit. So I don't see what the advantage to me as a landlord would be. I don't see the impulse on that side.

I'd also like to point out that you don't find in the legislation the description of the requirements under the building code because they are required within the code. I'd like you to understand and I'd like your fire prevention officer to understand that the building code requirement is that where an exit is through another unit, there must be a second exit. So I think there's a misunderstanding there.

Mr Brian Turnbull: I would think there is a misunderstanding, yes.

Hon Ms Gigantes: It would be helpful if your fire prevention officials took a look at the building code which was proclaimed in July 1993 and which includes those provisions.

Mr Brian Turnbull: Are you saying that this bill is different than the building code?

Hon Ms Gigantes: The bill does not spell out the building code requirements. The building code spells out the building code requirements. Those code requirements are not written into the bill. That's the normal form of legislation, as you will probably be familiar with it, where the regulations are separate from the bill.

Mr Brian Turnbull: No, I'm not at all familiar with the normal process on provincial legislation. I'm going by what my advisers are telling me, and they're telling me that this legislation will allow unsafe situations.

Hon Ms Gigantes: I don't know if Rob or one of our other officials could add to what I've been saying. Rob, do you have any comment on that precise point?

The Chair: It would have to be very brief. The rotation goes to the Liberals in about 20 seconds.

Mr Rob Dowler: On the issue of specific standards, Minister, perhaps staff could come back at a future point in time. Or I think yesterday we indicated that we would table the draft fire code regulation, and we could include the building code regulation in that for the benefit of the committee. To do it justice, it would do it longer than the time available.

Hon Ms Gigantes: We'd certainly be prepared to send it to Mayor Turnbull.

Mr Hans Daigeler (Nepean): I think that's precisely the point that I've been frankly pressing from the beginning. One of the problems why people are confused and why we also continue to be very concerned is because we don't have the regulations before us, not even in a draft form. Now, yesterday we were promised that we would see some of them. The minister said in her opening remarks that these accessory units will still have to meet certain health and safety standards, but we don't know precisely what they are.

So really I think the problem is, and why I think you

are in the situation that you're in, that you didn't receive at the time when you received the draft legislation as well at least the draft regulations that will come with these. That perhaps—we don't know—will eliminate some of those safety concerns that you have.

I find this rather interesting, this idea about the lodges and the licensing for lodges. Let me ask you, first of all, what are the conditions to qualify for this lodging licensing in your municipality?

Mr Brian Turnbull: They have to deal with fire safety in terms of access, proper wiring, proper siding. I don't mean siding, I mean wall panelling. The fire department is probably the key player in issuing that licence. In fact, recently we have turned over the whole program to the fire department. As opposed to the city hall issuing the licence, now the fire department issues it with help from city hall. There's parking as well.

Mr Daigeler: Are there any kinds of zoning considerations that are part of this lodging licence or not?

Mr Brian Turnbull: We allow either five or six students in a single-family-zone dwelling.

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Mr Daigeler: Anywhere in the city?

Mr Brian Turnbull: Yes, in a dwelling. If it was a semi-detached dwelling, they could go on either side. One of the provisions of our zoning bylaw, which we have just approved as a result of a neighbourhood density task force that we set up, is that there is a minimum distance separation. I don't know whether you're familiar with the city of Guelph.

Mr Daigeler: Not too well.

Mr Brian Turnbull: The city of Guelph brought that in and about a year later, we considered it and brought it in too; it's been approved by council and it's in front of the Ontario Municipal Board.

Mr Daigeler: In view of what you have in place already, which frankly strikes me as very efficient, do you have any kind of problem with illegal apartments at the present time?

Mr Brian Turnbull: I spoke to the woman who is primarily responsible, from the city hall point of view, for issuing these licences. Her guess was that there might be 50 out there that are not licensed that would be "illegal."

Hon Ms Gigantes: Those are lodging houses.

Mr Brian Turnbull: That's right.

Mr Daigeler: But what about—

Mr Brian Turnbull: Fifty compared to 700.

Mr Daigeler: —the apartments that we're talking about otherwise? These are specifically, I guess, directed towards student housing.

Mr Brian Turnbull: Yes.

Mr Daigeler: Do you have any kind of problem with either the supply or the illegitimacy of basement apartments for other renters?

Mr Brian Turnbull: For a mother-in-law sort of thing?

Mr Daigeler: Yes.

Mr Brian Turnbull: They are there. We don't see it

as a problem. It is not something that comes before us on a monthly basis the way the student housing situation does. You can tell by reading the real estate ads: They advertise a second unit in what is supposed to be a single-family zone. So you can tell that they're out there, but in terms of neighbourhood problems, no, it is not a problem for us.

Mr Daigeler: And in terms of demand, you don't have a problem either? One of the arguments for this legislation is that it will lead to additional supply. You don't have a problem that people are looking for additional housing in your area?

Mr Brian Turnbull: No, not that has been brought to me. I have to say that I think there's a certain defensible rationale that in a large house, particularly if it's a family member, the family member should be allowed to have their own unit, a mother-in-law or a granny flat type of situation. I think there's a certain rationale there and I would support that. But in order to achieve that, it certainly isn't worth the grief that it will cause university cities on these other measures.

Mr David Johnson: I'd like to thank you for a very thoughtful presentation today. It brings back memories. I was one of those students back in—should I say?—1967, 1968.

Mr Mills: God, you must be old.

Mr David Johnson: I graduated from Waterloo, but at that time I shared an apartment, I think on the fourth floor, fifth floor, whatever, in—

Mr Grandmaitre: Illegal or what?

Mr David Johnson: —one of the apartment buildings there. No, it was a legal unit. But I guess it highlights the difference in our municipalities. We had the city of Hamilton before us yesterday with an entirely different situation, a different stock of houses and different problems, and now we have problems in the city of Waterloo. You're saying one of the problems, for example, that you would face that maybe others wouldn't, because of the requirement for students to be housed near the university, that I presume there's quite a demand from owners of properties to convert them into—do we call them lodging houses for students? Is that how it would be phrased?

Mr Brian Turnbull: Yes.

Mr David Johnson: Under this bill, Bill 120, a house that was large enough now to contain what you would call one unit and which you have licensed for five or six students, could by law split into two units.

Mr Brian Turnbull: Yes.

Mr David Johnson: According to your regulations, then they could have five or six students in each unit. Is that, in a nutshell, the concern that you have?

Mr Brian Turnbull: Yes. To that, I might just add that monster houses in many cities in the province mean one thing; in Waterloo, it means a triplex with five bedrooms in each unit. So you get 15 students occupying that particular lot. Many of our inner-city neighbourhoods allow a duplex or a triplex. In our city, when you build a triplex these days, you build it with 15 bedrooms in it.

Mr David Johnson: I assume that there would be

certainly demand to do that, because you've indicated that the prices are a little bit higher. I don't know what the range of the prices would be. Is this a business or is this something that people would do, live on the property, or is it a moneymaking scheme?

Mr Brian Turnbull: The places where the owners live on the property, we have almost no problems. It's absentee landlords that are the problems. Often our best landlords are people who make a business of it. The problem landlords are the ones that come from Mississauga, buy their child a house and then they let the kid live there while they're at university. They're really not looking at it as an active investment at all. They are the problem people. The absentee landlords are the problem people.

Mr David Johnson: I presume there would be an incentive in a case like that, where there was somebody in that situation, to split it in two and get twice as much revenue. If you want to look at what the rationale and the incentive is, it's money, I presume.

Mr Brian Turnbull: What is intriguing and a problem for us is that right now in the city of Waterloo as a whole there is a surplus of student housing. Even in September you see "Room for Rent" signs. This never happened before. You never used to see that in September before. You might see it in January, but not in September. Even so, the new units are still being built, even though there's a surplus, because there's this very powerful demand for the students to be close to the school.

We worked out a deal with the student councils whereby we subsidized bus passes for students so that they would be encouraged to get on the bus and go a little further away for their housing so they wouldn't create this ghetto problem. Only a handful of students took us up on that subsidy. They want to be close to the university, and economics is very much a second consideration for them. It's the location that's their primary consideration.

Mr Arnott: Thank you, Mayor Turnbull, for coming here today to present your opinion on this bill. Elizabeth Witmer, your member, would have liked to have been here, but due to other commitments she's unable to be here. But she asked that we thank you as well for attending.

I'm not going to subject you to my years of living on Avondale Avenue and attending Laurier and what that was like, but I do recall it very well. I think the city of Waterloo over the years has done a remarkable job and a commendable job of balancing the need for adequate student housing very close to the university as well as family units in the close proximity of the university. It's tragic that the effect of this bill, as you've articulated, will throw a lot of that planning out the window and impact negatively on the city as you have attempted and as you've achieved that particular balance.

Mr Brian Turnbull: It is an ongoing struggle. This issue is not a new one, and it's not particularly related to this provincial administration. It goes back at least one, possibly two administrations. It has been the most challenging, most frustrating issue over the last eight years that I have ever had to deal with in a lot of years of experience on local council.

The Chair: Thank you, Mayor Turnbull. We appreciate your coming down in this cold weather to meet with the committee this morning.

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CANADIAN MENTAL HEALTH ASSOCIATION,
ONTARIO DIVISION

The Chair: The final presentation of the morning, the Canadian Mental Health Association. Good morning. You may commence by introducing yourselves for the Hansard recording system and begin your presentation.

Mr Hugh Tapping: We are here on behalf of the Ontario division of the Canadian Mental Health Association. In terms of your own mental health, take a break, take a deep breath, grab a coffee before we get into this. We're asking you to really shift your focus and change gears here. We're going from a very specific issue to a very broad one with a lot of specifics, some of which we don't know what to tell you.

My name is Hugh Tapping. I am one of the thousands of volunteers in this province who work with the Canadian Mental Health Association. Beside me is Sandra Tudge. She is a mental health consultant, community mental health consultant officially, and is the person who has largely put this presentation together for you. Next to her is Carol Roup. She is our senior director for policy research and branch services.

We have approximately four parts, three people to do it in. It won't take very long. I hope you have before you our presentation. We are not going to read it at you. We'll take you through it. We hope and pray that at your leisure later you will actually read every word we say; we hope.

Ms Carol Roup: Just a couple of details about our organization that I think might be helpful to you. The Canadian Mental Health Association, Ontario division, is an incorporated, registered, non-profit charitable organization chartered in 1952. As Hugh said, approximately 4,000 volunteers are active in direct board and committee service in a network of 36 branches located in communities across this province. Ontario division and branch services and programs are funded through government grants, United Way and supplementary fund-raising activities.

Since our founding, the Canadian Mental Health Association, Ontario division, has made a significant contribution to the development of housing policies and programs in this province. In March 1993 we submitted a response to a number of issues addressed in Professor Lightman's report and what follows is a response to the legislation resulting from that report, namely Bill 120.

I want to talk a little bit about principles of housing, the principles we support around supportive housing. We perceive that in recent years a shift of social attitudes has begun and persons with emotional, mental and psychiatric disorders are increasingly being viewed as citizens rather than consumers of mental health services, and we certainly applaud that shift. Citizens have the right to expect permanent, affordable, safe housing of their choice.

The CMHA, Ontario division, has endorsed the principles of supportive housing and we're pleased to see

that the Ministry of Housing has provided directives in the document Consultation Counts, which I'm sure you're familiar with, for permanent supportive housing and the delinking of support services from tenancy.

Our organization believes that housing for consumers of mental health services should be provided under the following principles: choice—consumers control their own lives, including informed choice regarding living situations and supports; permanency—consumers can maintain their housing as long as they wish; affordability; and the option to accept or decline support services without jeopardizing accommodation. We feel these are absolutely essential principles of supportive housing, in particular for the population we serve. These principles we believe provide the framework for the submission.

You may be interested to know that currently seven of our branches own housing stock and 20 of our branches operate housing programs. The proposed amendments to the legislation have implications for both our housing stock and our housing programs; quite significant implications.

The Canadian Mental Health Association would like to respond to four specific areas. They impact on our branches' programs and on the consumers for whom the programs are designed. These areas are housing supply, the inclusion of care homes under the Landlord and Tenant Act and the Rent Control Act, the exclusion of the fast track eviction process, and finally, the delinking of services and accommodation.

I'd like to turn it over to Sandra Tudge, who's a specialist in supportive housing.

Ms Sandra Tudge: I'd like to start by addressing the area of housing supply. Many consumers of mental health services in the past have been forced into unregulated housing situations and as a result have lacked decent affordable housing and have faced discrimination by landlords. The Minister of Housing has addressed this need for more affordable housing in Ontario. This need is of great concern to consumers because many have limited incomes.

Vacancy rates in some parts of Ontario have increased over the past several years, but they don't reflect the availability of affordable housing, as indicated for example by the Central Mortgage and Housing Corp's rental market survey which indicated that rental market housing that is available is at the high end of the market. Therefore Ontarians have few alternatives for affordable housing.

As well as a lack of affordable housing, consumers have also historically faced discrimination in accessing housing because of the stigma of mental illness. Because this is the case, consumers need more alternatives for affordable housing than other citizens.

The Ministry of Housing has developed coordinated guidelines and criteria for access to Jobs Ontario Homes and social housing in general. We hope these access guidelines will include special issues that mental health consumers face in obtaining and maintaining housing. Furthermore, we wish that the Ministry of Housing will ensure that consumers are aware of their rights and are

supported in taking action against landlords who discriminate against them.

We commend the government for developing 20,000 new non-profit housing units through the Jobs Ontario Homes program. We also urge the provincial government to request that the federal government support Ontario in the creation of additional non-profit units.

We are pleased to see that 10% to 15% of the Jobs Ontario units will be set aside for persons with support needs. However, we cannot underemphasize the need for the Ministry of Housing to work with the Ministry of Health to establish resources to support consumers who are residing in these units. A comprehensive mental health system based on the government's mental health reform priority areas of crisis, case management and consumer and family involvement is critical for consumers to maintain their housing.

In addition to building new non-profit housing, we urge the government to conserve and refurbish existing social housing to ensure its continued availability.

CMHA, Ontario division, recommends the ministry provide consumers with rent supplements as well as social housing in areas where there is a lack of this type of housing. Rent supplements provide an alternative choice for consumers who would like to live in social housing but must face long waiting lists, or where social housing is just not available.

As an alternative to rent supplements, the Ontario adult benefits program, as described by the government document *Turning Point*, could address the lack of social housing and the long waiting lists by providing increased benefits for accommodation. However, until the reform of the social assistance system is implemented, rent supplements will continue to be necessary.

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I would now like to address the inclusion of care homes in the Landlord and Tenant Act and the Rent Control Act. CMHA, Ontario division, supports the coverage of care homes under the Landlord and Tenant Act and the Rent Control Act. This coverage is consistent with the principles of supportive housing, as consumers will be assured to have a lease which is no different than any other person's in Ontario.

Our organization recognizes the need to exempt accommodation occupied for the purpose of rehabilitative or therapeutic purposes where the length of stay is less than six months and the housing is not the person's permanent residence. However, we do urge that the definition of this type of accommodation be clearly defined in the regulations based on consultation with service providers and consumers of mental health services.

CMHA, Ontario division, does not want to see consumers forced to move from place to place for six-month periods in order to receive treatment. We don't want to return to a graduated housing system where consumers must move from high-support to low-support homes for short periods of time until they are "ready to be integrated into the community." Our organization's experience indicates that this model is not sufficiently support-

ive of consumers and may actually facilitate setbacks in an individual's recovery.

CMHA, Ontario division, urges the Ministry of Housing to protect tenants who are currently living in unregulated rest homes which will be covered under the Landlord and Tenant Act once this bill is passed. There's a risk that in the period between the Legislature's first reading of the bill and the proclamation of the legislation, landlords will begin to systematically evict those vulnerable adults whom they would not be able to evict as readily under the new legislation. Therefore, we recommend that sections 1 to 3 of Bill 120 come into force as of November 23 rather than waiting until royal assent.

CMHA, Ontario division, believes that education and training are an essential aspect of the changes to the Landlord and Tenant Act and the Rent Control Act. Our branches across the province will need to be assisted in changing their programs and related documents. They will require support in developing the information package as prescribed in the legislation. It is important that there be a recognition of the need for sufficient time and resources for all housing programs across the province to effect these changes.

I would now like to pass it to Hugh Tapping, who will address fast-track eviction and delinking.

Mr Tapping: Fast-track evictions and the delinking of accommodations from mental health and other services that people receive are probably the warmer potatoes for us and I suspect for this government.

I'd like to preface my remarks by trying to remind you all that CMHA, Ontario division, is an umbrella organization. We coordinate, but there are 36 separate branches in 36 unique communities, each with its own board of directors, each with its own programs. After a couple of decades of hearing talk and promises and being involved in consultations and so on, frankly it took a while for people to start to believe that something actually might finally be changing. We welcome that.

At the same time, this organization doesn't and cannot create a committee because the government needs to hear from us or needs to hear from that field or something. The committee that is working on this will be working on it for the next year. It's going to have some serious implications for some of our branches, some welcome implications for others, but it's going to be an interesting time trying to stay together on this one.

Fast-track eviction is the proposal that was made in Professor Lightman's report that if a person has a psychiatric diagnosis, which is a somewhat different thing than being overtly crazy but never seeing a doctor, there would be a provision to turf that person out very quickly. Philosophically, obviously, we don't like the sound of that one. This sounds very much like an exemption from the rules that everybody else gets to live with based on a disability. Some of us have questions as to whether or not this would even be permissible under human rights legislation. Philosophically, we hate it. At the same time, something is going to have to be done sometimes, in very certain circumstances. That's quite obvious. It's the old question of balancing the individual's rights and the rights of the collectivity, the group around her or him.

We see a potential for abuse in this.

We recommend to this government that you do some further investigations even after this legislation is passed. We have questions still which perhaps in a year's time will be answered or answerable. There need to be some definitions about the circumstances, for instance, where this fast-track eviction could be used. We would prefer it to be based on behaviour rather than on diagnosis and apply to anyone. If I start manufacturing bombs in my apartment, my landlord should be able to get me out of there before the neighbours find out or take it upon themselves to evict me and so on.

We're not too sure, also, how often these circumstances actually arise. How often it is necessary to do this is something no one even dares to give us a guess on. We also wonder about what would happen with this fast-track provision with things like the domiciliary and the emergency hostels, crisis services and so on. If we're going to be allowing people to be turfed out, do we want it literally to be to the street, and that's supposed to teach them a lesson? There need to be safeguards in place, sanctions for people who would use this fast-track provision inappropriately, and there need to be sanctions in place for those who break those rules.

The implementation of this fast-track thing is another tricky one. The Ministry of Health has cut back on a thing called vacancy allowance. Is a provider of housing, whether for-profit or non-profit, going to be required to hold that apartment? You can imagine the implications for cash flow there. I don't think we need to get into that. It is a question.

What about those landlords who legitimately do act in the best interests of all involved? Legal aid will pay for the tenant who's appealing, but what about the landlords, the costs that would be incurred for legal advice as well as the opposite of that, the revenue forgone from holding apartments vacant?

So to summarize fast-track evictions, I guess if you must then you must, but be very, very careful. We think that a more proactive role of supporting people to live in communities would make a big difference too. The previously referenced government intentions to see more peer and family supports in place, crisis responses and case management, would make a difference to the need for these fast-tracks and also for the results, the outcomes, of those fast-track-type evictions.

Many of our branches already are in the business of offering services resembling, if not being identical to, what the government means by case management—crisis response, family supports, self-help groups and so on. We welcome this, we want to see more of it and we think that would reduce this whole thing to perhaps an academic issue.

The delinking of accommodations is the next topic. As it stands now, right here in Toronto, within not very many blocks of us, there are people living in an apartment which they're told is their own apartment but their landlord is also their service provider. That means that if your landlord takes it into your landlord's corporate mind that you've got problems you're not dealing with, that you're not addressing, in your own life, then perhaps the

threat of being evicted might get you to start showing up more regularly to your doctor's appointments, to your medication clinic or whatever.

Speaking personally, to me that is an institution. I grew up in that system back in the 1960s. I'm a person who survived what passed for the system in those days. A lot of what I see in Toronto and elsewhere in this province is that we've moved from the back wards to the back streets that Professor Lightman talked about into a little bit nicer-looking and more middle-class thing, but it's still an institution. If you don't comply with your treatment, then you can be threatened with and actually find yourself evicted. Imagine living in that sort of situation, folks. Cancer patients, AIDS patients, everybody else doesn't have to. Why should we?

We also urge you to remember, as this delinking of accommodations and services goes forward, that there are many models. Don't try to impose one ideal thing. We've seen too many versions of that over the years. I think all parties could agree to that.

1150

We have 36 different branches; let us let them figure out how to do this, rather than impose it upon us. Some of our branches have millions of dollars worth of real estate. Fine, let's stop being in the real estate business. But let's let them figure out for themselves how to go about doing this. Let's not have a thing where one policy from one ministry causes another ministry to have to find some extra money, because the real estate market is rather terrible, and if they have to go out and quick, quick sell their real estate in this market, who's going to cover the difference between what they're paying for it and what they're going to get now?

The government, I do believe, wants to see people remaining housed, so do be careful that you don't, by means of this or any other piece of legislation, impose. Let the local communities figure it out on their own. Likewise, let them figure out how to deliver those supports that we mentioned. Let's let it take some time, and if necessary, maybe we might even have to invest some dollars in this transition. The mental health education plan from the tenant support services of the Ministry of Housing is a nice example of the kind of partnership we're talking about. Many of our branches are involved in that and will continue to be.

The Ontario division of the Canadian Mental Health Association—and here I am reading very carefully and quoting: "We believe that every resident of Ontario, including those of us who are consumers of the services available in our mental health system, is entitled to a home which is permanent, which is private, which is safe and where human rights are respected." We urge passage of Bill 120 so that all tenants receive the same protection.

Thank you. Questions?

The Chair: Mr Grandmaître, time is relatively short. Three minutes.

Mr Grandmaître: I'll refer to your brief on page 2. I agree with you: "In addition to the lack of affordable housing, consumers of mental health services have also historically faced discrimination in accessing housing; the

stigma of mental illness still permeates our society.” What is your association doing at the present time to educate people who don’t appreciate their next-door neighbours?

Mr Tapping: We have recognized that our efforts in the past have not been terribly successful. It’s a timely question. I wish we’d had a chance to talk before this, and you could have done a slightly better leading question. I’ll turn this over, actually, to Carol. I think she’s better able to explain this than I am, but I’ll summarize it quickly by saying if you remember Participaction and that whole program, we’re working on trying to develop something similar to that. It’s not just a TV commercial; it’s a whole approach.

Ms Roup: If I were to name one single problem, bar none, in the mental health system, it would be stigma, the whole issue of how people are treated in communities and community attitudes. We are launching an enormous public education campaign. We’re just getting into it now and we hope this will continue for several years. We have the ministry’s support to do it. I think this will be one of the most important things we do. We have our branches on board with that and throughout this province we hope—and I say in a small way, because in order to do it in a big way I think you actually need billions and not millions—to change attitudes. I think we have made some impact over the last decade. Hence we have new kinds of legislation coming forward and actually passing, but I think we have a lot of work to do there.

Mr David Johnson: I guess maybe the point that comes up—and I’ll just let you elaborate on it; we’re very short on time. While you’re here in support of Bill 120 with reservations, I gather, in terms of fast eviction and one or two other warm potatoes, it seems to me that your basic message—Bill 120 really deals with tenancy, I think, as opposed to the care side of it. It seems to me that you’re really trying to tell us, I believe, through this presentation, that there needs to be a whole lot more emphasis on care. I wondered in particular where you see the priorities there. You mentioned a couple of areas, but I’d like to you to expand and prioritize.

Ms Roup: I think the emphasis does have to be on the care. As Hugh said, we are in the business of being landlords and I guess that’s a historic thing, because it was the only way services housing could be provided to vulnerable people. There was a time when we were encouraged and supported to get into housing stock and be the providers of service. I think through the decade that’s worked very well, but our experience now does tell us delinking is needed and it’s now a preferable approach. We would obviously focus on services; that’s our business. I guess the implications for us in terms of housing stock are enormous, but we do have the support to emphasize service.

Mr David Johnson: Is there any aspect of service—you mentioned crisis, case management, a few areas—that you feel need to be emphasized more than others?

Ms Roup: I think the priorities of mental health reform are the priorities of our board in the main. We would add a couple of others, but housing, case management, crisis and the involvement of consumers and

families happen to be our priorities, too. Our branches now are in the heavy consultation process to work out with their communities which of those they should emphasize. Many do all; some do just the case management; some do crisis. But I think there’s a lot of emphasis now on partnership planning in communities and who is best equipped to provide some of these things. That kind of consultation is heavily on the go now.

Mr Mills: Thank you very much for coming here this morning. I really thought your presentation was very interesting. In our constituency offices we are constantly faced with situations that you think you’ve seen everything, but you haven’t seen everything.

It’s very strange that quite recently I’ve been faced with two situations involving two persons with psychiatric disorders and in these cases they were children of very elderly parents. They arrived at my office and I thought, crumbs, what’s up; they looked so upset. It happens that their son was booted out of some accommodation. Here we have a couple in their 70s who have absolutely no idea of where to turn or what to do. I must say it made me scratch my head as to what we could do to help these people.

Do you see Bill 120 coming to grips with some of those issues, that we wouldn’t have that situation? Do you think that’s going to be a help?

Mr Tapping: Yes. The trouble is that the way government works, and probably is desirable, is that it doesn’t try to accomplish everything at once for everyone. There is this bill, there is this very ministry that we’re talking about, there are other ministries that are involved as well. They all are going to have to do things differently and do different things, including far more consultation and simple talking to one another in order to make this whole—you see, for me, I grew up in that system. I don’t really care about mental health reform as it’s portrayed in legislation. What I concern myself about is reforming the mental health system, not through legislation but seeing our society adapt to itself and change. Bill 120 is part of it.

How can the Ministry of Health talk about reforming the mental health system while literally thousands of people who are in it can be on the street this afternoon? The obvious threats to a person’s own stability at that point, the obvious threats to the budgets for the homeless shelter, the psychiatric emergency ward and so on, are obvious. They’re all interlinked. There is no one answer, in other words.

The Chair: Thank you for appearing this morning. We will be considering your views as we take up the clause-by-clause consideration of this bill March 6.

I remind members the committee resumes at 2 o’clock this afternoon and would ask that you attempt to be prompt so we can begin on time.

The committee recessed from 1200 to 1401.

TOWN OF NEWMARKET

The Acting Chair (Mr Bernard Grandmaître): Our first presenter this afternoon is Mayor Raymond Twinney of the town of Newmarket. Mr Mayor, good afternoon.

Mr Raymond Twinney: Good afternoon, Mr Chair-

man, and thank you very much to you and the members for receiving us today. It's a great opportunity to be able to appear before you.

Although I am here and my statements will be made more or less, we feel that this bill is a fait accompli. We understand that and we're not here to try to say that it should not be passed, but we are here out of great concern, a concern that we share, I'm sure, the health and safety and the legal rights of all families: apartment dwellers and home owners, landlords and tenants.

This bill, Bill 120, will legalize thousands of illegal basement apartments overnight but will not make those units safe overnight. In a statement made by the Housing minister last November, Evelyn Gigantes said, "Tenants living in illegal units often live in poorly maintained or unsafe conditions," and I totally agree. Not only do they live in poorly maintained or unsafe conditions, but as soon as you pass this bill they will be doing so under the protection of the law.

Not only do we as municipalities have no way of inspecting these underground units for health and safety, we don't even know where they are, and because we don't know where they are, we don't know a lot of things about them.

We don't know that there isn't faulty electrical wire that may cause a fire. We don't know whether the people living in these underground units may be living in cellars and not getting enough daylight. We don't know whether they're getting enough heat in the winter and we don't know whether they're getting enough fresh air.

We don't know whether they have a smoke detector or whether there is adequate fire separation between the units. We don't know whether the basement windows are big enough to escape through in case of a fire. We can't tell if these families are getting enough water pressure to do all their household chores. We don't know that the landlord hasn't drywalled the furnace in and cut off the air intake, possibly creating a fire hazard or causing carbon monoxide to filter back into the living area.

We don't know how many children are living in these units, whether they have a backyard to play in or whether there'll be spaces for them in the local school. We don't even know that these people exist. We can't be sure we'll enumerate them for election purposes. We can't include them in our planning projects.

We have no records of these people and what kinds of conditions they live in. What kinds of rights can they possibly have when according to our records they don't exist?

Again I quote the minister, "This legislation will give them the same rights as other tenants in Ontario." I don't think so. Have you ever driven around in a parking lot and not been able to find a spot, and if you didn't find a spot, you've taken a chance and parked on the side of the road and found a parking ticket on your windshield when you returned? I bet most of you have, as I have, and we know how frustrating it is. Can you imagine how frustrating it would be if you did this on a regular basis? If you were a basement apartment tenant, you would probably be doing this. Most basement apartment dwellers have no

rights to parking and this bill doesn't give them any.

We already have dangerous traffic situations in neighbourhoods where we suspect illegal basement apartments. We have cars parked end to end on narrow, open-ditch roads, blocking fire hydrants and forcing children to walk in traffic. We have vehicles parked on front lawns, across sidewalks, in side yards, everywhere and anywhere all because single-family dwellings were not planned, not built and not inspected for more than one family.

We have heard the province talk about the home owners' rights to create apartments within their homes as long as reasonable standards are met. In our eyes, the only reasonable standards are safe standards, standards that can be monitored and enforced, standards that will let us know how many people we're talking about so they can be included in our planning of services accordingly.

We have no dispute with your objectives. We do want affordable housing in Newmarket, and Newmarket has provided single-family and multi-unit housing based on sound planning principles. We can assist you in making basement apartments, garden suites and granny flats into another form of affordable housing, but only with guaranteed health and safety and planning standards.

As far as we can see, this bill guarantees only one thing very definitely: the financial gain of home owners who already have these apartments, at the expense of the rest of the taxpayers. This bill, once you pass it, will invite home owners who live in single-family houses to generate a second income by constructing apartments in their basements. You'll be giving the average home owner a licence to construct a dwelling with no safety inspection.

Who's going to be responsible when things start to go wrong? What about the rights of home owners who choose not to install a basement apartment? Where will their visitors park when basement tenants take up all street parking?

When the province came out with affordable housing requirements, Newmarket worked hard to meet that demand. We put in just under 1,000 units in the last four years. Many of those are condominium developments with narrow private roads, no street parking and very limited visitor parking. We do not understand how we are going to fit this type of development and the people into the system. We know that our infrastructure is what keeps our cities alive. Without adequate water supplies, sewers, roads, hydro power and gas lines, we cannot service our residents.

This bill means a potential 10% increase in Newmarket's population over the next couple of years, people we haven't planned for. That's too many people too fast, too soon. And that's only assuming one out of every five home owners will build an apartment. This is not just guesswork; this is done by the survey of our land use for municipal housing that we were asked to prepare in 1992 by the province. It's actually done by survey.

A surcharge in a sewer is not a safe and healthy thing. What happens is that the sewers can't handle the amount of raw sewage flowing through them and the sewage climbs up into the manholes, manholes that our works

employees service on a regular basis. We have provincial health and safety standards that prevent us from putting our workers in an unsafe and unhealthy situation.

Ever since Bill 90 was introduced in 1992, people are assuming they have the right to build a basement apartment and have been doing so illegally. This is proven by what has just taken place in a fairly new section of our municipality of approximately 1,000 new single-family dwellings, where in the last year and a half we have had a demand increase of 1.5 megawatts of hydro, resulting in a need to upgrade the station. This is an increase of 15% on this hydro station. This station supplies 90% residential and 10% commercial. This increase cannot be explained by the normal 3% which we attribute to appliances and air conditioners. We and Hydro have concluded that it is the illegal basement apartments that are responsible for the increase, with the prime source of heating being baseboard because that is the cheapest way for the landlord to provide heat.

Not only is the upgrade of the hydro station going to cost our municipality \$500,000 to meet the demands—and if we don't upgrade, that means the lights go out—but this is also contrary to the provincial guidelines for wise use of energy and the goal of getting away from electrical heat. It may be a cheap way for a landlord to provide heat, but it's a very expensive way for a tenant to buy heat, and he probably pays the heat on top of his rent.

The Housing minister is right in saying, "The thousands of tenants living in these settings haven't had the same protection, the same rights or the same security enjoyed by other tenants in Ontario." But the only way this legislation will change that is by allowing municipal governments to inspect the development of all secondary units, not just garden suites, to guarantee the health and safety of all occupants and maintain quality of life for all residents.

Evelyn Gigantes was recently reported in the papers as saying that restrictive municipal zoning bylaws were responsible for the tragic deaths of two people living in a Mississauga basement apartment. I strongly disagree. Wide-open zoning would not have saved their lives nor made their unit safe. But inspections would have made their unit safer and possibly saved their lives. The only way we can inspect these units is if we are given the authority to do so.

1410

There are many ways we can make sure that these units are brought to safe standards. By inspecting units under construction, we can help the home owners avoid costly or even dangerous construction mistakes. By regulating the location and number of units in a particular area of town, we can help the tenants find parking that won't overload our roads or block our sidewalks. By keeping track of the units, we can report back to you on the success of basement apartments and work together on any problems which might still exist for these people.

As mayor of a municipality, my first interest is the safety and welfare of my residents. This bill will take a lot of that interest out of my hands. I need your authority to allow me to keep these people safe and healthy.

Some of my senior staff are with me today: Susan Plamondon, my solicitor; the chief planning official; the chief building official; the chief fire official; and my executive assistant.

We have taken the liberty of drafting some suggested amendments to this legislation which will allow us to put our concerns into action. I am asking you to take a look at this document and to consider our concerns. I am asking you to go one step further in order to make your legislation as foolproof as you can, as much in the interests of the people you are trying to help as you can, by allowing us to be involved and working with you.

At this time, I would like to introduce again the municipal solicitor of our town, Susan Plamondon, who will bring some comments on behalf of the staff and their concerns.

Miss Susan Plamondon: You have before you, I think, a copy of our submission that contains within it the remarks Mayor Twinney just made. It also contains some background material which obviously I don't propose to read to you, but which I would commend your reading at your convenience.

I realize this committee's been working very long hours and has heard from a large number of interested people and will be continuing to do that, but we like to think we're coming to you with an idea, a constructive suggestion, not just complaining or arguing bitterly about what the legislation is going to do to us.

We hope this is seen as a constructive suggestion, a practical suggestion to encourage, if you will, the illegal basement apartments, because that's largely what's going to result from this legislation. Most of the additional units, and our housing statement supports it, at least in our community will come in the form of basements below grade, or partially below grade, dwelling units.

Basically our idea is this: Leave the legislation alone as far as it goes, not to suggest any specific amendments to change the as-of-right component, except to say that as a matter of land use planning and with respect to zoning bylaws themselves—and I'm not talking about the official plan provisions but specifically the zoning provisions—we can't prohibit the erection or installation or the creation of the units, but you can't actually use the unit unless it's been inspected by the municipality. In other words, it only becomes legal if it has been inspected.

For existing dwelling units, which we all know exist, we hope that would encourage the landlord who believes he complies with the standards that are being suggested or imposed by the province, not necessarily the municipal standards but the ones we believe will be promulgated by regulation and which we assume to be, because we haven't seen them yet, similar to those contained in the consultation paper that was published in 1992; provincial standards, not necessarily the ones the municipality would prefer, but the provincial standards.

Those landlords would then be able to tell their tenants they're an inspected unit. The tenant will be able to know it's an inspected unit and the municipality will know it's there. The infrastructure is actually in place to do it, because the province of Ontario has already delegated to

municipalities the authority to inspect pursuant to the provisions of the Ontario Building Code. We all have the infrastructure in place to implement this suggestion.

In point of fact, based on some of the research we've done, in many cases, if the unit doesn't comply, it can be made to comply at a relatively small cost. We're talking largely here about the public health and safety components, the fire separations. We hope you'll include the idea of interconnected smoke detectors between units so that the residents of the other unit will know if the smoke detector in the other unit has gone off.

The idea is a very simple one. It may be almost too simple and it may be flawed, but we really believe that if you create the environment in the legislation to encourage existing landlords to come forward and have their units inspected, and encourage those home owners who will have the right to create the units to have their units inspected or to consult with us about the better way to do it or how to do it safely, and allow us to inspect it and issue perhaps the equivalent of what's called an occupancy certificate—we do it now for brand-new construction. Why wouldn't that same sort of approach be appropriate for a unit that's created in this manner?

It's almost too simple. It won't catch all of them, but it will catch a lot of them and we'll at least hear about and be able to help those who do comply and we'll know where they are. Some of the municipal objectives I think you will admit are very legitimate in terms of long-term land use planning and population projections for planning purposes, for servicing purposes. That information is necessary in terms of the operation of municipal government.

Being able to have a record of where these units exist has got to help us; not to say they can't exist but to know where they are. Where we do have a bad landlord, we will have the ability to prosecute, and I think that's in everyone's interest, to encourage people to do it right, to do it safe, to meet the rules and to ensure that the residents, the very people who need housing in this form, will be able to live with some degree of comfort, just like everybody else in the province.

We've taken the liberty of drafting some sections. There are two approaches that we drafted. They're found towards the back of your paper and basically they say what I just said. You can either do it as a matter of zoning—in other words, give municipalities authority to pass zoning bylaws that would prohibit the use of these units unless they are inspected and conform to the requirements, wherever they come from—or the other alternative is to actually make it an offence, as a matter of the Planning Act, for any person to permit the use of a unit unless it has been inspected.

We hope you'll have a look and have your legislative drafters have a look and consider them. We believe it'll work. It won't catch them all, but it'll work.

We also would like you to consider, in addition to recommending that sort of an amendment, a couple of things that are contained in this heading that we call "Suggested Amendments and Recommendations," and the first one, of course, is what we've just suggested: Amend the legislation to say it's only legal if it's inspected. I

know you'll be hearing from representatives of the fire prevention people and others, building safety standards. We would suggest that Bill 120, however it finds its way through, not be proclaimed in force until whatever amendments are appropriate in the context of the public health and safety legislation are considered. It should happen in tandem and certainly not before that's done.

We note the bill proposes to permit the minister by regulation to exempt classes of housing from the operation of the permissive sections of the Planning Act that you're proposing, the as-of-right intensification. That's good because we can think of at least three classes of housing that right off the top should be considered for that kind of exemption. I hope it's not inappropriate to tell you about them because they are very significant and some of our background material supports the need for them.

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The first are usually in condominium form but they may not necessarily be in condominium form. Detached houses, semi-detached houses and row houses that don't front on municipal streets, in other words, are served by internal private driveways that are not maintained by the municipality, should not be the subject of this kind of intensification because the internal roadways in and of themselves are in general terms far too small to permit any kind of reasonable parking standard.

In many cases, and more particularly in recent years, I think you heard the mayor tell you that we've approved about 1,000 town house type units, many of which are in this form. Basically, the municipality gave the density to the developer, going in the front door in terms of number of units. As a matter of good planning and subdivision design, had there been a clear indication when these units were being approved that intensification would be permitted to occur in them, we might have asked for consideration, even if we couldn't impose it, of more visitor parking, or not agreed to a substandard pavement width or shorter driveways. We might have encouraged the designer to come up with something better. We hope that you'll consider those kinds of units as being inappropriate for intensification in this manner.

Another provision that exists in the town of Newmarket zoning bylaw, and I suspect can be found in many other zoning bylaws, is a provision that says where the finished floor of a dwelling unit, or of any building, is located below the level of the sanitary or storm sewer services for that lot, it shouldn't be used as a primary residential purpose. If there is a problem, heaven forbid, that tenant is looking at a very serious problem. So as a class of dwelling units, we think that where that intensification would occur under those circumstances, it should be clearly prohibited and exempted from the as-of-right privileges.

The other provision in the town of Newmarket's zoning bylaw which exists and is partially handled in the regulations—until we see them, we don't really know—is that we have two definitions in Newmarket's zoning bylaw: One's for "basement" and one's for "cellar." A basement: no problem. Nine times out of 10, the building

is well suited to conversion to permit an additional unit. But if it's a cellar that we've defined as a storey, two thirds of which is located below grade, we don't think that makes for quality of housing for the prospective tenant that's acceptable.

We would urge upon you consideration of a regulation that would exempt from the as-of-right conversions a structure in which the storey of the building that would form the additional unit is really a cellar.

Looking at the clock, I think we've run out of formal submission time. That's the essence of the proposal. If it's not inspected, it shouldn't be legal. Everybody stands to gain if you do that. The prospective tenant stands to gain, the province stands to gain, the municipalities stand to gain and the good landlords stand to gain. The only people who stand to lose are the bad landlords, and heaven knows we've all been trying over the years to find ways to get to the bad landlords.

Market forces will work over time. People will know they can call the municipality and find out if the unit's been inspected. If they have a choice and can learn to ask the landlord, "Are you inspected or not?"—simple question, or they can call us on their own—they'll choose to live in the better ones. The bad ones will disappear hopefully over time.

Mr David Johnson: I think you've really bent over backwards to try to make this work, I must say, of all the submissions I've heard. I just wonder, without the right of entry, do you think it's possible for this to work? In other words, you're assuming they won't use the unit unless it's inspected, but I really wonder how many people will come forward for that inspection. If there are complaints, or if it's been brought to your attention that there may be a unit in this basement, but you have no right of entry to go in and inspect, then it seems to me you're still going to have a problem.

Miss Plamondon: The bill does do something to help tenants in that situation where you have a tenant who wants to complain. That's one of the real problems now. The tenants don't want to complain. They're afraid that they're going to be thrown out, that the municipality's going to come in, and that raises an issue I meant to mention and that's the notion of a moratorium, which I'll deal with.

We think tenants might come forward because now, as a result of the bill, as a matter of land use, the landlord isn't going to be able to say, "Out you go because the use isn't permitted." The use will be permitted, and that's been, in our experience, the legal reason given to evict tenants under these circumstances where we hear about it. We think there will be some initiative from the tenant.

Mr David Johnson: So if they feel the matter can be rectified, brought into conformance with a reasonable cost that the home owner will actually pay out, then they'll probably come forward.

I wasn't clear: What's the difference between a basement and a cellar?

Miss Plamondon: A basement would be any other structure that has any portion of the floor below grade but more than a third of it is above grade.

Mr David Johnson: So if two thirds or more are located below grade—

Miss Plamondon: It's a cellar.

Mr David Johnson: That's a cellar. Certainly in East York, almost all buildings would have cellars on that definition.

Miss Plamondon: I don't know. I don't know your municipality, but the idea would be that you could define "cellar" as something else. That's what it happens to be in Newmarket. But the notion is, find that level, whatever you consider is appropriate, and prohibit it.

Mr Stephen Owens (Scarborough Centre): Your Worship, Ms Plamondon, I want to thank you for your presentation and your constructive suggestions. Ms Plamondon, you answered my first question around the reason why tenants haven't complained in the past, because there has not been a remedy or a means to a remedy in the event that tenants are frustrated with the conditions they live under.

I'm intrigued by your idea of a registry. I'd like to have your view on how you would see the registry functioning. In this time of economic restraint on all levels of government, how do you see the registry being paid for? Who do you see the registry being held by? How would you see granting access, given various Freedom of Information and Protection of Privacy Act regulations with regard to information?

Miss Plamondon: We maintain at the moment building permit records. I don't see this process as being substantially different from that. In many cases, the conversion should prompt an application for a building permit, in any event, okay?

Mr Owens: That's the operative word, though: "should."

Miss Plamondon: That's right. I think that's one of the dangers of the bill the way it is now, because it's a bit of an inducement to people. They're going to think—because they're not going to read the bill. They're going to hear that they can do it and they're not going to realize that in many cases—they'll be very innocent—they should be getting permits for some of the conversions they do. Not every one is going to require a building permit, but some of them will and they won't know. It's something, because it's done within the confines of the building, that we don't see and even the neighbours don't see. "I'm finishing the rec room." Who's to say what is really going on? That's what's happened over time and we know it will.

The registry, in my view, would be very like the records we maintain now for building permits and occupancy certificates, so I see it being a municipal function. Frankly, the complaints are going to come to us. They have historically. They're going to continue to come to us. It's in the municipal interest to do that. As for freedom of information and protection of personal privacy provisions, if we maintain the registry not by owner name but by street address, the information is public: "Yes, it's been inspected. Yes, it conforms."

Mr Owens: You're talking about the gold seal of approval as perhaps a selling feature. How would I, then,

a perspective tenant, be able to follow up with the landlord's presentation that his or her unit has in fact been inspected and given the gold seal of approval?

Miss Plamondon: Two things could happen, I think. If something like an occupancy certificate is issued to the landlord for the unit, he can clearly show that to the tenant if the tenant asks for it. Or if the tenant has reason to believe it might not be safe or doesn't trust the certificate or it's too old or simply forgets to ask the landlord, they can always call the municipal office and check with the building department or wherever the function is assigned and say, "What can you tell me, if anything, about 123 George Street?"

1430

Mr Grandmaître: A very interesting submission: Mr Mayor, there's a lot of "I don't know" and "We don't know" in your submission. I'll forget about the "don't knows."

Mr Twinney: In fairness, the "don't knows" are because it's a true fact that we don't know.

Mr Grandmaître: Let's talk about something you do know and that's your survey. I was interested in your survey. On page 5 of your submission, you say, "This bill means a potential 10% increase in Newmarket's population over the next couple of years." At the present time, Mr Mayor, how many, let's say, unregulated or unacceptable basement apartments or cellar apartments would exit in Newmarket?

Mr Twinney: We estimate 2,000.

Mr Grandmaître: You estimate 2,000 illegal apartments?

Mr Twinney: We don't have any legal basement apartments per se, maybe very few that may be in an area where a unit has been changed into a two-dwelling unit or into a triplex, but in a normal single-family dwelling area, we do not have the zoning change, the special development areas.

Mr Grandmaître: Then let me address the lawyer. How come these units were built without a building permit?

Miss Plamondon: Because we didn't know they were going in and in some cases—

Mr Grandmaître: How about your inspectors?

Miss Plamondon: We can't get in. If they do them without a permit, we can't get in.

Mr Grandmaître: You can do it with a search warrant.

Miss Plamondon: Yes, but justices of the peace don't like to give you search warrants and things like that.

Mr Grandmaître: I know. That's why I'm asking you the question.

Miss Plamondon: That's the problem, and frankly this bill does nothing to help us with that.

Mr Twinney: If I could add to that also, we're not out to persecute—

Mr Grandmaître: No.

Mr Twinney: —and so we try to accommodate, and where there are home owners who are reasonable, who

keep their tenants, then we aren't after these people, we understand, but where there are blatant problems—

Mr Grandmaître: Deficiencies.

Mr Twinney: —deficiencies, health problems, many things that we do get, then we have been going in, but it is almost impossible, because as the solicitor suggested to you, they don't want you to get in because of their fear of getting kicked out.

We did a survey to what may take place in future "if you had a right," and the survey came back somewhere between 5% and 17%, so I used the middle of the road.

Mr Grandmaître: Let's say, Mr Mayor—

The Chair: Thank you.

Mr Grandmaître: Is that it?

The Chair: That's it.

Mr Grandmaître: Maybe I should be the Chair.

Mr Twinney: That's right.

Mr Grandmaître: Well, you see how many questions the Chair gets. Thank you very much for appearing today. I think your presentation will be most helpful. The committee will be considering this bill clause by clause during the week of March 6. Thank you for appearing.

Mr Twinney: Thank you, members of the committee, for hearing us.

LONDON NORTH COMMUNITY ASSOCIATION

The Chair: The next presentation will be the London North Community Association. Good afternoon. The committee has allocated one half-hour for your presentation. You've been here for a few minutes so you've seen how this works. If you would introduce yourself and your colleague for the purposes of Hansard, you may begin.

Miss Mary Lynn Metras: Mr Chairman and members of the committee, we thank you for this opportunity to speak before the committee. My name is Miss Mary Lynn Metras and on my right is Mrs Bonnie Hawlik, a representative of the London North Community Association. I'm also a city councillor but I'm not representing the city in any capacity today, but I am a resident within the London North Community Association.

The London North Community Association, to explain a bit, is an umbrella organization that represents nine different ratepayers' groups within our city. As well, the London North Community Association has had contact with associations outside our community such as Guelph, Hamilton, Kingston, Ottawa, Toronto, Waterloo and Windsor. Our neighbourhood associations have had similar problems regarding lodging houses creating multidensity from single, detached homes.

Many of my comments today are strongly worded. To date, we have lobbied and appeared before many representatives and committees to express our concerns, all to no avail. Since this may be my last chance, somewhat like Custer's last stand, before what I would be will be the inevitable enactment of this legislation, I feel I must be more direct.

Please do not make the mistake of thinking I am radical such as this legislation Bill 120 is. Please don't also cast aside my comments. Both of us, Mrs Hawlik and myself, are sincerely frustrated, and so are many of

my neighbours, by the constant stonewalling of the government on this issue. While we support the philosophy of the legislation, the global application is absurd.

To begin, how many of you live next door to a house where your neighbours go up on the roof for a beer? How many of your neighbours park six to eight cars on the lawn? How many of your neighbours let the grass grow a foot and a half high? How many of your neighbours put their mattresses on the front porch for a week and their couch and chairs on the lawn? How many of your neighbours never shovel their drives or sidewalks, never pick up the junk mail and leave the garbage on the porch for two to three weeks at a time until the maggots start to show? How many of your neighbours have 100 people over every week or so for a beer bash which spills over on to the adjoining property, use their trees to urinate on and their grass to park on? How many of you have had to phone the police every other week on your neighbour?

The real question is, how many of you would put up with it?

Noise bylaws, untidy lot bylaws, property standards bylaws, parking bylaws and charges for zoning infractions are ineffective in regulating a transient population. By the time the complaints are dealt with in the court system, the culprits are long gone and new groups have moved in.

However, the problem is not exclusively a student problem. We aren't opposed to students in our neighbourhood. We've always had them there. We're a university town. It is a planning problem, though. Our neighbourhoods became destabilized with the introduction of Bill 128, now section 35 of the Planning Act. Consequently, our neighbourhoods have suffered an immense increase in the number of conversions. Homes are owned mostly by absentee landlords who have purchased near the university area to speculate and exploit their prospective tenants. Some absentee landlords own up to 25 or more lodging houses. The number of people crammed into these homes is often as many as seven to 10 tenants.

In an effort to address the safety concerns, the building code violations and to protect our neighbourhoods from this increasing density and destabilization, the city of London, with the blessing of the Ministry of Housing, has implemented a lodging house bylaw effective July 1, 1993. Lodging houses in existence prior to the bylaw can apply for legal non-conforming status and receive a licence. Three lodgers can live within a single-family home, but renting to more than three requires a rezoning to consider such items as parking, fire and building code requirements.

Under sections 4 and 5 of Bill 120, the province intends to strengthen section 35 of the Planning Act. We believe this move will threaten our lodging house bylaw.

This provincial government's arrogant attitude and indifference towards this issue of lodging houses, safety concerns and our neighbourhoods is somewhat alarming. This government does not seem to appreciate that single-family neighbourhoods, or for that matter multifamily neighbourhoods, are delicate organizations.

Single-family neighbourhoods are an important value and tradition in Canada. Change is ongoing in the community and we accept that, but destructive change, such as this bill introduces, compounds our problems and is unnecessary. Toronto's solution for Toronto problems won't work for London's unique situation, and what I have always said is the best government is the one that's closest to the people.

What we've done here is list the number of long-term risks that we feel deserve closer attention. One of these is the elimination of local input and accountability in planning decisions. This legislation is a direct attack on that democratic process because individuals no longer have the right to be heard regarding intensification proposals.

Another risk deals with losing our single-family zoning. Two values, I think, residents of Ontario aspire to are freedom of choice and freedom to buy the home of our choice. Various types of neighbourhoods in a free society should be allowed to flourish, including single-family neighbourhoods. Our homes are our largest financial investment. Increasing density for an urban area is a good thing in appropriate areas, but the dictated global action plan presented in Bill 120 impacts our community financially, socially and environmentally, robbing our citizens of their rights. In fact, it's an outright invasion of our property rights and an opportunity to influence planning decisions at the local level.

Another risk that deserves attention is the potential for more substandard housing to occur, which is already evidenced within our community. Mrs Hawlik's slide presentation later will give us an opportunity to foretell the effects that section 35 of the Planning Act and now Bill 120 will have even more for us.

Essentially, this legislation will create more neighbourhoods of absentee landlords. The New Democrat dogooders are issuing absentee landlords a licence to print money at the expense of our neighbourhoods.

Another long-term risk that we feel deserves closer attention is how will capacity of our existing municipal services designed for existing densities handle increased sewage, electricity and traffic demands long-term? Over time, who will pay for increased servicing and the increased number of inspections of these illegal units that will be legalized? In reality, our tax dollars will be spent by the municipality's building division on complaints regarding illegal units and as well taxpayers will pay for increased services that will be needed.

The combined results of enforcement woes and subsequent reduction in our property values will serve no other than the pious NDPs with a wish to have all citizens equal, regardless of their efforts or investments.

At this point, I will hand over to Mrs Hawlik this part of the submission and then I will end up and conclude.

1440

Mrs Bonnie Hawlik: The following slide presentation was prepared for our municipal election and also presented to the Sewell commission.

It addresses the concerns of home owners relating to unregulated and unlicensed lodging houses in our neigh-

bourhoods. The slides were taken in many different neighbourhoods at all times of the year. However, they all have a common thread: the absentee owners and the overconcentration of rental housing which has disrupted and changed the character of our neighbourhoods.

When the provincial legislation struck down the municipalities' right to regulate land use with respect to occupants' relationship, it was a signal to speculators and real estate agents that buying up and converting even very modest properties to lodging houses would offer a very high return on investment. However, in order to accomplish this every available nook and cranny in a house would be utilized for sleeping quarters regardless of building or fire codes. It is not uncommon for dining rooms, living rooms and even furnace rooms to become rental space to optimize the profit. In many, if not most cases this would be accomplished with a minimum of expense, which leads to substandard accommodation.

The city of London and neighbourhood groups have been working together for many years to address the situation. Once again, bylaws and zoning amendments instituted by our municipality to try to protect the stability of our neighbourhoods are threatened by the passage of Bill 120.

The ads and rental notices you will see will help you understand how our neighbourhoods have become investment driven. When you look at these pictures, you will see there is no regard for parking bylaws or safety of pedestrians and children with their bikes and trikes or any regard for property maintenance.

Many of the parking problems are compounded by the large numbers of tenants having large groups of friends, which also multiplies the number of parties and increases the rowdy behaviour. The yearly decline of these properties is so noticeable and disheartening to us all.

The first slides deal mainly with parking, and the second segment shows the lack of property standards when large groups of unrelated, unregulated people live together in a house just like yours or mine, zoned in most cases as single-family.

Enforcement of any bylaws is virtually impossible because of the sheer magnitude of complaints. The fact of the matter is that things are getting much worse and we are losing families daily. This is an indication that we must get to the root of the problem. When a street loses the balance between owner-occupied homes and absentee landlords, who will monitor the situation? Neighbours get frustrated and move out and thus the domino effect.

These are the illegal parking spots for the property with that 1-800 number.

The tenants in this type of accommodation are transients. It's not unusual to have tenants from September to April, a completely different crowd from May to August and a new group again in the fall. Most often, tenants must sign a one-year lease, whether they are here all year or not. So much for affordable housing or any type of property upkeep. Whether it's legal or not, side yards and front yards are often paved over.

This house boasts six legal parking spots. Where do you think we might find them? This house was also

featured in a London Free Press article. The bathroom light fixture was held in place with Q-Tips. Imagine the landscape after the snow. This parking lot is within yards of where my children play. On an average day in the neighbourhood so many cars and people come and go, if the neighbours don't know who belongs here, how on earth would the enforcement officers? Scenes like these are common throughout many neighbourhoods.

This is one of the houses advertised, owned by that gentleman who advertised it. Remember: large yards and parking. Seven tenants and all their vehicles reside here. This was once a two-bedroom bungalow, and I might add is across from my driveway. Once an illegal parking spot becomes common, it gives rise to more. This past year this house continually had four cars in the drive and on the lawn. Only one spot was deemed legal here. Monitoring and enforcing these parking violations requires continual efforts by the city of London's traffic division, as well as it being a virtual waste of our tax dollars.

You'll be interested in this story. The ink was barely dry on the sold sign when the seven-bedrooms-for-rent sign was posted. The last time we checked, London was still in the 519 area code. This was a three-bedroom house. Seven bedrooms and seven or more tenants bring at least that number of cars. Any wonder you see the for sale sign on the house next door? And you wonder why that lady gave up and left our neighbourhood. That house is now owned by an absentee owner. What a surprise.

Property standards hardly exist with this type of accommodation, and dandelions herald spring. Real estate agents have long been promoting this use in our areas and have been known to discourage families from locating in neighbourhoods with a high percentage of absentee owners, referring to areas surrounding the university as student ghettos. Often they advertise homes in these areas as student stuffers and advertise in out-of-town newspapers encouraging this type of investment in what used to be considered one of the best areas in London to live.

That's Mel in the window, Mel Gibson.

It's common knowledge that there have long been problems on campus relating to alcohol abuse, personal safety and traffic. These problems have followed the students into our neighbourhood.

"For rent, three rooms, or sublet six." Another 416 number, and this is that six-bedroom house, as is this the rear entry to it.

A family swing set overlooked Corey's House of Slave Chicks. I think that says "Waterloo sucks," not Western, but they're great slogans for families to grow up with. What message is being given to our youngsters when snowmen hold beer bottles and have anatomically correct body parts?

This ad appeared over two years ago. Even then, calculating this at an average of \$325 per room times seven, someone was making money. It's the neighbours who lose, many of whom have taken their cases to the Assessment Review Board to have their taxes lowered because of the effect these properties have had on their value of their homes.

These next slides exemplify the province's idea of intensification—another way of intensifying, anyway. We call them add-ups, add-outs and add-unders.

This particular low-density home has four entrances.

This already illegal triplex has made yet another unit at the back. The addition here is larger than the original house, and what was left of the lot became parking, with the garage as a drive-through.

What other neighbourhood do you know whose residents throw out the entire household spring and fall? These photos were taken either two weeks before or two weeks after the scheduled big cleanup.

London's lodging house bylaw should be given the chance to make the absentee owner more accountable for his commercial enterprise while offering safer, affordable accommodation, which should be everyone's first concern. With the passage of Bill 120, this becomes impossible, as it intends to remove the municipality's ability to license lodging houses and further encourages this rampant intensification in all neighbourhoods everywhere and anywhere in Ontario, as of right, without public input.

Miss Metras: Our association does not object to affordable housing policies which are properly and fairly created, as assessed and implemented by our municipality with public input. The rosy picture painted by the Ministry of Housing's advocates in their quest for residential intensification is not occurring within our community, and you can see that.

Central government should not continually accrue power without accountability. This legislation may have some merit with local options, provided it can be implemented by local option. For those municipalities that seek to attain provincial objectives, they should be allowed to participate. For those that don't, they are represented by local ratepayers cognizant of local conditions with direct accountability. This course of housing destabilization which we are teetering on is nothing but class-busting by a socialist government in an attempting to destroy our single-family neighbourhoods.

Finally, I leave you with this message: Try to stay tuned to the other municipalities while in the province of Toronto. I repeat again, the best government is the one closest to the people, and your New Democrat government is out of touch with the real world and only in touch with Toronto's world. We are from London, Ontario.

1450

Mr David Winninger (London South): Thank you for your presentation. Even though you're with the London North community, and I've spoken with Mary Lynn on many occasions, I'm from London South. I hope we can continue to be one community, even though sometimes we don't share the same ideology.

I'll tell you what my problem is. The city of London, as the mayor recently said on Tuesday, acknowledges that there should be apartments in houses, and in fact you have an office at city hall that advises landlords on how they can convert to apartments in houses and the province helps fund that office.

My problem is this: We have people all over London with affordability problems. We have illegal apartments all over London. I acknowledge there are good neighbours and bad neighbours, good landlords and bad landlords, good tenants and bad tenants. To tell you the truth, I've lived in multiple-family areas where the standards were better than some single-family areas I've lived in.

What you're wanting us to do here, I think, is segregate off areas of the city, and in London there are large, single-family areas of the city, where you don't want people to occupy apartments in houses because of some problems, mostly around the university, that I think the president of the student council there and the president of the University of Western Ontario and city hall, where you're a councillor, are working to solve. This is my problem with your position today.

Miss Metras: Can I respond a little bit? Unfortunately, we've gone through this conversation a multitude of times, Mr Winninger and myself, and it is a big problem around the university area. But I think the problem here is that the city should decide. We should have local accountability and I think Mr Winninger is missing the point on that. The other thing is that we should have the right to choose the type of housing we want in our city and we should have the right to plan that.

I haven't got a problem with students in the neighbourhood. As I said before, we are a university community and we've accepted that, but what you saw on there and the \$325 a month for those basement apartments for seven or 10 people in a house is not affordable. There is some other exploitation that's going on up in the north end that I could show you and talk to you about in the real estate ads, and you will see them there. That is not affordable.

I can also tell you I've been in the houses and they are serious, the things that are going on as lodging houses. We've tried over and over and over again and we've been so frustrated by this because this government does not accept the fact that a house rented by students who rent a house for hire or for gain by an absentee landlord is not a lodging house to them, but it is a lodging house. I'm sorry. When they own up to 25, it's a lodging house.

Mr Winninger: But, Mary Lynn, an apartment in a house still has to respect the property—

Miss Metras: In the right area.

Mr Winninger: —health and safety laws—

Miss Metras: In the right area, David.

Mr Winninger: —and you can't just have as many people—

Miss Metras: No, you can't globally put it where you want.

Mr Winninger: Sorry. No, I just wanted to say, you can't have as many people occupying an apartment in a house as you want because there's square—

Miss Metras: Maybe you could read the brochure.

Mr Winninger: Hang on. There are square footage requirements laid out—

Miss Metras: No.

Mr Winner: —under the health bylaw as to how many people you can have in an apartment.

Miss Metras: There may be that, but maybe you'll read the ad in the back of the book and it shows you exactly that in one unit you can have five to 10 tenants, and the man is renting it that way. That's exactly what they do in London and it's a big nuisance to have to go around the city and try to find all these people. Like this business of no right of entry—

Mr Winner: I know my colleagues have some questions too.

The Chair: Mr Grandmaître, please.

Mr Grandmaître: Thank you, Mr Chair. I think what the city of London is looking for is what 834 municipalities in Ontario are looking for, the power to legalize these apartments, and not only legalize them, but to control zoning. What municipalities are looking for is the authority, not only a bylaw that you can't enforce but a bylaw with power to give municipalities the right to go in and inspect and—

Miss Metras: That's right, and reasonable hours.

Mr Grandmaître: —render these unattractive units liveable. I hope you're not the ambassadors to your London Chamber of Commerce because if you were ever to show these slides, I don't think you'd get too many visitors.

Miss Metras: No. Yes, it's on our main street too.

Mr Grandmaître: Yes. As a municipal councillor, what has council done to resolve this situation?

Miss Metras: What we've done is we've got the lodging house bylaw in place, as I said, with the blessing of the Ministry of Housing, I think. We're moving along. We're starting to enforce that. We've sent letters out to people we think are lodging houses. The inspectors have notified them and talked to them and they're going in and they're starting to do that. It's difficult.

Mr Grandmaître: With a search warrant?

Miss Metras: No, no search warrant, just knock on the door and hope that—

Mr Grandmaître: Good luck.

Miss Metras: Yes. It's been turning out pretty good but we are going to face a court case to make sure that this is not a residential unit versus a lodging type house. We have to prove that it's not a residential unit.

Mrs Hawlik: I would just like to add that these houses are rented just like in the ads, by the room. They aren't apartments in these houses. They are literally flop-houses. There are bedrooms everywhere. We have been in and seen the conditions. They're like rabbit warrens.

Interjection.

Mrs Hawlik: In the compendium—may I—sorry.

The Chair: No, speak through the Chair, please.

Mrs Hawlik: Through the Chair, my understanding is in the compendium, part V, it says it will restrict the municipality's ability, prevent the municipality's ability to license lodging houses. That is part V.

Mr Gary Wilson: No, it won't prevent it; no.

Mrs Hawlik: I'm sorry. Then I misinterpreted the

compendium.

Mrs Dianne Cunningham (London North): Mr Chairman, this is my neighbourhood and I admire—

Mr Gary Wilson: What, there?

Mrs Cunningham: Yes, that might even be my street. I don't know but —

Mrs Hawlik: A couple of blocks away.

Mrs Cunningham: A couple of blocks. But I should tell the members of the government that long before they were members of this government this community, I think, has shown some leadership in the province of Ontario with regard to trying to find a fair solution to the kinds of problems that were predicted there, and other communities in the province of Ontario have as well, especially communities where we have university students and more opportunities to see these kinds of things happening.

I'd just like to say publicly that I'm very proud of the work that the London North Community Association and other associations in London, including associations in Mr Winner's riding, have done to provide the province of Ontario over probably a 10-year period with good information and good advice so that we can have good decision-making with regard to residential property. After all, this act is about residential property.

I think it's ignorant that people come and sit on this committee who don't know what this act is all about. Mrs Hawlik was quite correct in her observations with regard to part V. The bill amends paragraph 63 of section 207 of the Municipal Act to ensure that the power of a municipality to licence lodging houses does not extend to residential units. How blatant.

Mr Gary Wilson: Could we have clarification?

Mrs Cunningham: How blatant that the residential units cannot in fact be supervised, cannot in fact be governed by the municipality as to standards but—

Mr Mills: I thought this was asking questions, Mr Chairman.

The Chair: Order.

1500

Mrs Cunningham: Mr Chairman, I think we listened to some three questions by Mr Winner. I'm just helping, I think, another constituency that comes before this committee that is asked questions and then argued with. Today, I happened to sit here. The government member said that wasn't so and I'm just saying it is so.

To go on to part, this amends the Planning Act to ensure that the official plan—

Mr Gary Wilson: On a point of order, Mr Chairman: We've been going through these committee hearings now for a couple of days and we've reached some kind of a process that allows us to look at questions like this where there appears to be some confusion.

The Chair: What is it specifically?

Mr David Johnson: This is chewing up our time. Is there a point of order here, Mr Chairman, or is this what's going to happen—

The Chair: What is the point of order?

Mr Gary Wilson: The point of order is that this is getting us nowhere as far as learning what's actually in the bill is concerned. I would like a ministry person to come to offer some clarification on this.

Mrs Cunningham: I'm sure we can do it outside this person's time.

Mr Gary Wilson: All right; it's okay.

The Chair: Mr Wilson has raised a point of order that is not a point of order. It is something that could be raised in between delegations.

Mr Gary Wilson: Do you think it's a waste of time to get clarification?

Mr David Johnson: It's a waste of time. Do it on your own time.

Mrs Cunningham: You do it on your time like we do it on ours.

The Chair: Order. We have about one minute, Mrs Cunningham, if you're hoping for a response.

Mrs Cunningham: I, like my colleague—all of us—get questions on this bill and I think it's our responsibility to be able to answer. When we get people with this kind of expertise, of course we should be asking questions. But I must say that I am appalled. The last time I came, the city of London was here and Mr Winninger continued to say that 70% of the citizens, it was well-documented, favoured basement apartments, which is not even the question. Of course they do. The question here is, they wouldn't favour them if they knew their municipalities were not in control.

Mr Winninger: On a point of order, Mr Chairman—

Mrs Cunningham: I would like to ask a question.

Mr Winninger: This is a point of order.

The Chair: Mr Winninger, on a point of order.

Mrs Cunningham: I think you've already ruled people out on points of order.

Mr Winninger: I have not, throughout these proceedings, used the term "basement apartments." I referred to apartments in houses.

The Chair: That is not a point of order, as you know.

Mr Winninger: I would like Mrs Cunningham to correct the record.

Mrs Cunningham: I stand to be corrected: apartments in houses. As far as I'm concerned, that's even worse. Can I ask a question?

The Chair: No, thank you. The time has expired.

Mrs Cunningham: I was interrupted twice and I couldn't even get my question out.

The Chair: Thank you for appearing today.

Mr Gary Wilson: Could I get a clarification now?

The Chair: If the parliamentary assistant would like to ask for one.

Mr Gary Wilson: Could I get that clarification now?

The Chair: If the committee would like the clarification now, that's fine, or we could wait till after all presenters have presented today. If I have unanimous consent, we can listen to a clarification right now. Agreed.

Mr Douglas: I will clarify the provisions in Bill 120

which deal with lodging houses. Bill 120 contains an amendment to the Municipal Act which would clarify that while municipalities can continue to license genuine rooming houses, they can no longer license rooming houses which in effect are residential units occupied as single housekeeping units. This is the term that is used in the legislation. Basically, a single housekeeping unit is a group of individuals who form a household.

It is irrelevant whether that household is a family household or a group of individuals who operate in the same manner as a family household; in other words, a group of individuals who share the premises in a joint and undivided manner, who each participate in the operation of the household and who are there voluntarily is a single housekeeping unit. A group of students where students each rent rooms individually, don't know each other and just use their individual rooms as accommodation, would be a genuine rooming house and municipalities could continue to license.

Mr Derek Fletcher (Guelph): That's up to the municipalities.

Mr Douglas: That's correct.

The Chair: Mr Johnson, I hope we can be brief here.

Mr David Johnson: I'll be brief. If such a unit is set up using Bill 120, in a sense, and the municipality has not got the power or the right of entry, how does the municipality know how it's being rented or what's happening inside?

Mr Douglas: The municipalities would be required to obtain a search warrant if there was a concern that a unit was being occupied in a way other than as a single housekeeping unit.

Mr David Johnson: And they'd be required to give evidence in a court, some sort of physical evidence, which they can't get, so they don't get the search warrant.

Mr Douglas: That's identical to the case which exists today. Where lodging houses exist, some are licensed and legal; clearly, others exist which are illegal.

Mr David Johnson: So you admit that in a circumstance like that, a municipality wouldn't know if it's a lodging house or a legal apartment or what's going on.

Mr Douglas: The legislation makes it easier for property standards officers to obtain search warrants by removing the requirement that they specify the evidence to be seized as a result of the search.

Mr David Johnson: But they still have to give evidence to the court.

Mr Douglas: That is correct.

Mr David Johnson: It's like one millimetre easier, "I need this much extra authority," and you're giving them this much extra authority.

Mr Douglas: It's still necessary for them to show reasonable grounds that an offence has occurred. That's correct.

Mr David Johnson: Yes, which is impossible.

The Chair: Could you just please identify yourself for the purposes of our Hansard?

Mr Douglas: James Douglas, housing development and buildings branch, Ministry of Housing.

The Chair: Thank you. Before we get to Mr Schmidl, who has been patiently waiting, I would just like to bring to members' attention that we do have a letter addressed to the clerk that has been circulated providing some information about the housing policy statement and some other matters, just so the members all recognize they have that on their desk.

CRISIS HOUSING LIAISON (SUDBURY)

The Chair: The next presentation is by the Crisis Housing Liaison (Sudbury), Mr Schmidl. Good afternoon and welcome to Toronto. You've had 30 minutes allocated to your presentation.

Mr Barry Schmidl: It's nice and warm in Toronto to answer your questions compared to Sudbury.

Members of the committee, I'm very pleased to be here before you today to present our comments and recommendations on the legislation you're considering, Bill 120, also known as the residents' rights bill.

By way of introduction, please let me describe the work that Crisis Housing Liaison does in our community of Sudbury. Our primary purpose is to ensure that all citizens of our community have safe and secure affordable housing. We do this in many ways.

Our housing registry program helps people find housing in the Sudbury area. We secure housing vacancy information from landlords and maintain an inventory of currently available rental housing units. This vacancy listing is given to tenants following a needs assessment and an orientation to the housing search.

We also provide counselling to people in crisis due to lack of affordable housing and help them get the necessary support to overcome their barriers to housing. This may include financial assistance or linking with other agencies like the Canadian Mental Health Association and the multicultural centre.

In 1993 we helped more than 2,300 men, women and children find housing in Sudbury. Nearly 30% were homeless when they came to us for our help.

Through our tenants' association development program, Crisis Housing Liaison also assists people in the preservation of tenancies and the improvement of living conditions. Tenants and landlords learn how provincial legislation works to provide property standards and terms of tenancy agreements. We also advocate for policy changes with governments to help resolve the barriers to safe and secure affordable housing for all.

This of course brings me to you today in support of Bill 120. The Residents' Rights Act is an important piece of legislation for tenants across Ontario and for tenants in Sudbury. This bill both helps preserve existing tenancies and permits the development of affordable housing.

Despite an increase in the vacancy rate in Sudbury in the last year, there remains an affordable housing crisis in our community. Affordable housing options do not meet the demand. There are over 800 families and single people waiting for subsidized housing with the Sudbury District Housing Authority.

In a survey of people with unmet housing needs in 1990, 72% of respondents said they were paying more than 30% of their gross household income on housing. Just over 32% were paying more than half.

The Canada Mortgage and Housing Corp has reported that average rents in rental units have risen higher than the rent control guideline every year since 1990, although they do not expect this trend to continue into 1994.

The new rental units that have come on the market and pushed the vacancy rate up last year are too expensive for most tenants in Sudbury. Over 35% of families in Sudbury had a household income of less than \$30,000 in 1991. Only a handful of these people could afford the average \$716-a-month rent for a new two-bedroom apartment in Sudbury.

Clearly, the citizens of Sudbury need more affordable housing. The residents' rights bill helps to address this need. The permitted development of apartments in houses, as addressed in parts IV and V of the bill, will help increase the supply of affordable housing in two very important ways.

Permitting the creation of an apartment in a house creates new rental housing in an old space and creates rental revenue for the home owner, which helps defray his or her own housing costs. This makes home ownership more affordable for more people. As well, the stock of rental units in a traditionally more affordable unit type will increase. This means tenants will have more affordable housing options.

Apartments in houses is a welcome and appropriate solution in Sudbury. Permitting the development of existing unused residential space means the current housing stock in our community can be rejuvenated to meet with the changing character of our households.

Like cities all over Canada, Sudbury's average household size has decreased significantly over the last two years, and there is actually a table on the next page that will give you the data about that. Homes designed for families of four and more are now occupied by households of about two.

Also in keeping with the national and provincial demographic trends, the number of households in Sudbury has increased although our population has declined. The greatest increase has been among one-person and two-person households, as demonstrated in table 2, and there are graphic depictions of the demographic characteristics at the back of the handout that you have. This means that the demand for smaller housing units in Sudbury is very strong. The permitted development of apartments in houses will help meet this demand.

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Bill 120 not only facilitates an increase in the supply of affordable housing, it does so without taxing existing municipal services such as water and sewer. The legislation allows home owners to convert unused rental space into rental accommodation. This is residential space previously used by former family members.

In these changing demographic times, we're talking about smaller and more households, but not more people. There can be no further stress on services if the popula-

tion has in fact decreased since the homes and services were first constructed.

In the matter of apartments in houses as a southern Ontario or a Toronto solution, a solution which increases the stock of affordable housing is a welcome solution in northern Ontario and in Sudbury.

At this time I also want to take the opportunity to address the fearmongering which has developed around the issue of apartments in houses. Crisis Housing Liaison advocates for both the legalization and the regulation of apartments in houses. With the passing of Bill 120, all apartments in houses in Sudbury will be subject to the fire safety standards set in the fire code. Similarly, structural standards for newly created units in houses will be set by the building code.

We see these provisions as necessary and appropriate to ensure safety in these units. No tenant should need to fear for his or her life because of the state of their housing. The Residents' Rights Act will help ensure that this does not happen in Ontario. Passing Bill 120 is the responsible way to protect tenants who live in apartments in houses.

The extension of rights to residents in care homes is an equally important aspect of Bill 120. The most vulnerable of our society, people who must depend on others to maintain independence, will be affected by this legislation. Including residents in care homes in the protection provided to other tenants through the Landlord and Tenant Act, the Rent Control Act and the Rental Housing Protection Act will help preserve tenancies.

With residential protection there will be a decrease in the infamous garbage-bag evictions. Landlords will have to provide adequate grounds for evictions and will have to follow due process. The significance of this fact cannot be understated. These are tenancies of people who have many more barriers to housing than most tenants. Their housing crisis often takes on many additional dimensions.

With fewer illegal evictions, there will be less stress on both tenants and community services. In Sudbury this includes provincially funded agencies such as ours, the Canadian Mental Health Association and the Sudbury Community Legal Clinic.

Social service agencies which help low-income people deal with housing and poverty issues are currently performing to maximum ability in Sudbury, as with the rest of the province. The legal clinic, for example, has been on a case load restriction for the past three years due to the high demand for services. Over half of the summary advice given at the legal clinic is in landlord and tenant law. A decrease in demand for housing support services is welcomed by both service providers and tenants alike in Sudbury.

However, the exclusion of regulatory measures for care services and meals may negate the residential protection intended by Bill 120. Tenancies will still be put in jeopardy if landlords of care homes are allowed to arbitrarily increase charges for care services.

We recommend that the standing committee on general government create provisions to regulate the charges for care services in care homes. If tenants cannot get the care

they need, the usefulness of their housing in the care home becomes void.

With consideration of this one recommendation, Crisis Housing Liaison is very happy to support the passing of Bill 120. The benefits of the Residents' Rights Act to our community will be significant. It will help preserve existing tenancies and permit the development of affordable housing. Let me assure you once again that these objectives are of a very high priority in Sudbury. Thank you for your attention to our presentation. I'd be pleased to answer any questions you have.

The Chair: Thank you. Mr Conway.

Mr Sean G. Conway (Renfrew North): I pass.

Mr Arnott: Thank you for coming to Toronto today and giving us your views. Your argument is based on the premise that there's a lack of affordable housing in Sudbury right now. How do you know that?

Mr Schmidl: We know that not just from our experience as an agency or the volunteers and staff—we have their anecdotal experience—but also through figures from Canada Mortgage and Housing Corp and other generally accepted providers of statistics. The fact is that the vacancy rate has gone up in Sudbury and everyone recognizes that, as it has gone up in other places.

The problem is that the vacancies in the more newly built units are considerably higher than those in the older ones because the rents are higher. It's fine to have vacant two- or three- or one-bedroom units, but if you can't afford to live there it's just not part of the options that you've got.

Mr Arnott: You still have the rent registry. How long has it been since that was set up—not the rent registry, I'm sorry, the affordable housing registry that you maintain?

Mr Schmidl: The housing registry we've maintained in one form or another since our organization began, about 1985, I guess. It's been upgraded and changed slightly along the way.

Mr Arnott: That's the primary function of the agency, I guess.

Mr Schmidl: That's been our major function all the way through, yes.

Mr Arnott: What's the vacancy rate in Sudbury now?

Mr Schmidl: I don't know the exact figure off the top of my head. It's around 4%.

Mr Arnott: And at the present time, how many units do you have available in your registry?

Mr Schmidl: It varies on a day-to-day basis. We do include everything that is vacant, even including the upper rental market. I'm afraid I couldn't give you a ballpark figure even as of like today because I will tell you there are significant monthly variations. The vacancy rate and the number of units that we have available always go up in April and May when students leave and they always go down in the fall when students arrive because just like the people who were just here from London North, we have a university and a college too.

Mr Arnott: Do you have any guess as to how many illegal basement apartments are in Sudbury at present that

will become legalized with the passage of this bill?

Mr Schmidl: I'd hate to give you a number because I know I'd be wrong. I know that there is a significant number of them but I couldn't hazard a guess. I know that there are a lot of, not just basement apartments, but there are apartments in houses that are not well maintained by their owners, although I don't think the situation is the same as was just portrayed by the people from London North. That's a different city; it's a different situation.

I think there are a number of legal apartments that aren't in that great shape either. I think one of the benefits of the bill, though, is that tenants will be less afraid that their unit will just be shut down if they complain to the city and ask that property standards inspect it.

Mr David Johnson: You mentioned that the previous deputation from London was a different situation. I think that's what we're finding. We had a deputation from Hamilton, for example, yesterday which is a completely different situation, then London, and your deputation is different. I wonder why, since all the municipalities seem to have something different about them, different housing stock or university or different conditions, everybody says Toronto is different from everybody else. That's one thing everybody agrees on.

Mr Schmidl: Especially people from Toronto.

Mr David Johnson: Especially people from Toronto, okay, well, whoever.

Mr Owens: Or Sudbury.

Mr David Johnson: Or Sudbury or London before. Wouldn't it make sense that municipalities, rather than have one law that treats everybody precisely the same—and certainly we've heard of initiatives in some municipalities such as Hamilton, for example—wouldn't it make sense to allow the municipalities to have some flexibility to deal with the affordability issue, meeting those local circumstances?

Mr Schmidl: I believe that the legislation—you can correct me if I'm wrong—gives municipalities the right to set standards for quality and for safety of the units. I really think affordable housing or lack of affordable housing, no matter how it manifests itself as a problem, is a common problem in most of Ontario.

I wouldn't necessarily directly compare rural southern Ontario to urban northern Ontario or rural northern Ontario to Toronto or something like that, but what I've seen, from speaking to people in different parts of the province at different meetings or discussions about Bill 120 or whatever, is that there is an affordable housing problem in this province. Government can't address it entirely by assisting people in building cooperative and non-profit housing. This is a way for the private market to address that problem.

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Mr David Johnson: Do you think there's any danger of that perception being out of date? We had the Ontario Real Estate Association before us, for example. I don't know what your views are on that particular association, but its view is that in terms of purchase of a house, the

affordability's as good now as it has been in the last two decades. You're talking about the vacancy rate in Sudbury for tenants being about 4%. In Metropolitan Toronto I would think it's somewhere between 2% and 2.5%.

I can tell you that in my by-election of less than a year ago, knocking on doors, I ran into many buildings, and these are not just the high-priced buildings—I don't have that many high-priced buildings in my riding—where there are vacancies; there are lots of vacancies in the low end as well as the high end. I'm wondering if we're trying to solve a problem that existed back a number of years ago.

Rents are coming down. I'm hearing from tenants who are saying their rents have either levelled off or actually gone down. Is there a possibility we're solving a problem that municipalities, number one, are grappling with in their own way and, number two, was much more severe a number of years ago?

Mr Schmidl: As the vacancy rate has gone up in Sudbury, it has gone up elsewhere. It used to be as low as 0.3% in Sudbury. However, I'll tell you that our agency sees just about as many people as we used to who need affordable housing. The Sudbury District Housing Authority has just about as many people on its list for accommodation as it used to. I really think there is still that need for affordable housing out there, and I think this is a way for the private market to deal with it as opposed to just the government dealing with it.

I live in a non-profit housing project and I think it's a great place to live, but government and community organizations can't deal with the entire affordable housing problem. I think this is an excellent way for the private market to deal with it.

Mr Owens: I'd like to thank you for your supportive presentation, and I'd also like to thank the Sudbury Star for the thumbs-up editorial in support of the Minister of Housing and the provincial legislation.

I think a couple—not just a couple, your presentation certainly resonated with me in terms of attacking the issue as not just being a Toronto problem, as some other presenters have characterized the issue of the need for affordable housing or the need to legalize basement apartments, and that in fact in communities like Sudbury there are problems with garbage-bag evictions and unsafe units.

The other method I was pleased that you attacked was the issue with respect to servicing. What I hear in my community, the riding of Scarborough Centre, as well is that it's going to overburden the services. In fact, when you look at the kinds of demographic tables that you've presented that populations are declining—particularly in my end of the world, which is the southern part of Scarborough, an older part—that as your table demonstrates in your part of the province populations are declining, this is where these apartments are opening up as parents begin to age or younger people are moving back into the neighbourhood.

My question is a supplementary to the question that was asked earlier with respect to the presentation from the Ontario Real Estate Association and the issue of

affordable housing. I think I'd like to focus that issue a little bit more crisply. The people that are on your waiting list and the people that are calling the Sudbury community legal services for summary advice with respect to L and T issues, are these the kinds of people that would be walking into the Royal LePage office and asking to see the listings with respect to the purchase of a new home?

Mr Schmidl: Hardly likely. I think that's the best way to put it. There are a few people who are in the situation where if they have the opportunity they can rent or they can buy, but the vast majority of the people I was talking about who would benefit from this as tenants don't have home ownership as an option at present in their lives.

Mr Owens: They don't have the concerns whether or not they can use the RRSPs as part of their down payment or whether or not that low-interest mortgage that the Royal Bank or the Toronto-Dominion Bank is advertising is going to have any impact on their purchase decision?

Mr Schmidl: I'm sure that a lot of them would like to buy a home and would like to use their RRSP and such, but they don't have an RRSP because they can't save up any money to put in an RRSP.

Mr Owens: That's right.

Mr Schmidl: I think they'd like to have that problem, but they don't, and it's not an option for them.

Mr Owens: So in resolving their primary concern, which is of course their housing issue, this bill goes a long way to resolving that concern, giving them a safe place to live with a reasonable assurance of protection?

Mr Schmidl: I would say it goes a long way to addressing that. Certainly, the more apartments in houses that are built according to the property and safety standards of the relevant municipality and the fire code and all that, that sort of relevant legislation, the more people will be able to move out of the real slums, the dangerous firetraps, for lack of a better word, and into more decent housing. Some accessory apartments aren't fit to live in, that's quite true, and if there are options, people are going to move out of them. There have to be more of these apartments for people to move into and out of firetraps.

The Chair: Thank you, Barry, for appearing today. You will be followed by another Sudburian.

ONTARIO ASSOCIATION OF FIRE CHIEFS

The Chair: Next we have, from the Sudbury Fire Department, Fire Chief Don McLean. Good afternoon, chief. You may begin now.

Mr Don McLean: Today I'm representing the Ontario Association of Fire Chiefs as the second vice-president of the association. Basically, we have some very grave concerns about apartments in basements and accessory apartments, and I would like to list a few of them.

The Ontario Association of Fire Chiefs goes on record that we are not opposed to affordable housing such as apartments in basements but have grave concerns that many of these types of units do not meet a minimum life safety standard.

The concerns of the Ontario fire chiefs are also echoed by other groups, such as the Ontario Municipal Fire Prevention Officers Association and professional and volunteer firefighters throughout the province of Ontario.

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As the fire chief of the municipality of Sudbury, I have witnessed many basement fires where injuries and even deaths have occurred. My municipality does not differ from any other municipality, and all are subjected to basement apartments without proper and legal regulations and safeguards.

At this time I would like to discuss some of the concerns and life safety on behalf of the Ontario Association of Fire Chiefs.

First, we have some concerns. I'd like to outline a couple of probably the more grave concerns that we have—the registrations and/or licensing. It is imperative that all basement or accessory apartments be registered and/or licensed through the local municipality. This would afford the fire service an opportunity to inspect these types of apartments, which at present are either non-conforming or illegal occupancy.

We also feel that getting them licensed, the fire department would have a handle on which ones of these units are in our city. We would be able to at least inspect them and have the proper mandate for them followed.

Also, the power of entry: Bill 120 must contain provisions allowing local fire inspectors the right of entry to inspect such premises. At present most of these apartments have never been subjected to any form of fire or life safety inspection. These powers must also be included in the Fire Marshals Act.

Some of the life safety features: We're going to start with, first of all, means of egress. Most of these apartments do not have proper access to exits. Because they're in basements, the exits out of those apartments don't meet the requirements for the minimum width, and most of them are either cluttered with all types of boots, coats etc, especially in the winter months, because they have no storage area in any of these apartments.

The minimum number of exits and their location: We feel strongly that anyone who's going to live in basement apartments should at least have two exits out of them. Basically, a lot of people are using windows as exits which do not meet the requirements and which are not even big enough for anyone to get out of.

The protection of exit stairways: When we're talking about protection, we're talking about fire separations. Again, these apartments are built normally beside, around furnace rooms etc, and they do not have any fire separation. If a fire does start in the stairway or in the furnace room, normally their only means of egress is then blocked and they cannot get out of the house.

The flame spread limitations within the means of egress: Again, most of these exit ways out of there are usually done in panelling because it's cheaper and it's to easier maintain etc, but there is absolutely no fire spread limitation on it. If a fire does start or progress into the exit, then there is no way for anyone to get out of there because they're into an inferno at the present time.

Also, the exit door swings: We have concerns there also so that they swing in the proper direction. I think I'd be safe to say probably 90% of them would not swing in the proper direction.

The indication of exit locations and direction: Again, I'll cover some of that in the emergency lighting, but we would like to have some form of exit location and also some form of signs that indicate the way out of that area.

Also, I've addressed the windows: The windows below grade must not be considered as alternative exits. Basement windows are inadequate in size and normally have maintenance problems such as security bars, landscaping, window wells, natural elements etc. Basically, we cannot accept windows as an exit for some of these reasons, plus many other reasons.

Fire alarm and detection: We are recommending that all basement apartments be equipped with smoke alarms which are electrically interconnected with the rest of the building. The reason that we're asking for them to be interconnected is that just in case there is a fire on the main floor, the interconnected smoke alarms would then give a signal to the people down below and give them early egress out of that building.

Emergency lighting: Be required to illuminate the means of egress in accordance with the Ontario Building Code. Again, these basement apartments, 90% of them, are below grade, and if anything happens, they're completely in the dark. We're asking for emergency lighting that would illuminate at least the stairway out of the basement apartment.

Fire separations: As I mentioned briefly a while ago, most apartments are built next to furnace rooms, electrical rooms and must be properly separated. Again, as I mentioned, they're being separated with panelling and any other cheaper form of separation. Again, there is no fire separation, there is no spread rating on any of this material, and what we are getting is a very quick ignition and a very rapid fire that progresses.

Also, portable fire extinguishers: We are looking at every home having a portable fire extinguisher and that each dwelling unit has one also.

Hydroelectric service: We're saying an inspection by the Ontario Hydro branch must be a requirement to ensure safety of the occupants. In most cases, these apartments are supplied power from the existing panel which was installed as a requirement for a single-family dwelling.

Basically, what we're saying is that when these homes were built they were built according to the codes and the requirements for a single-family dwelling and what has happened is that they've put in a basement apartment and they're also feeding that apartment off the same power source. Again, they're using them for electric stoves, ranges etc. Basically, we are asking that the hydroelectric service be brought up to date.

Recommendations: Because basement apartments have been add-ons which have been constructed without approvals and proper separations, it is recommended that all basement apartments be sprinklered in conformance to the requirements of NFPA 13D standard for sprinkler

installations in residential dwellings.

Some of the municipalities have already gone to their local councils and have asked that new construction and also existing construction be sprinklered. We feel that sprinkling of a basement apartment is not really a costly item and it would take care of a lot of the unnecessary evils that we have in those buildings at present.

Also, in summation, the Ontario Association of Fire Chiefs is confident that if the above-listed life safety features are built into basement apartments, it will still allow for affordable housing, at the same time protecting the citizens of this province who live in basement apartments.

I've made my presentation fairly short so that we could spend some time on some questions. I highlighted the areas of concern and I'd like to leave it open for a longer question period because I think there probably will be quite a few questions pertaining to this.

Mr David Johnson: That was an excellent presentation. The obvious concern of the fire chiefs for safety comes through, and we certainly applaud you for that. I'm sort of starting from the back and working forward, so I almost feel a bit apologetic, but the first thing I'm going to ask you about is something to do with cost.

You indicated that you didn't think there'd be a great deal of cost in terms of the sprinkler system, having that introduced in terms of all basement apartments. I think there was somebody yesterday—it might have been the fire chief of Mississauga—who thought that the cost would be in the range of \$3,000 to \$5,000 per unit.

Mr Don McLean: For a full unit, that's correct.

Mr David Johnson: In your estimation, would that be for a sort of typical basement apartment? Of course, it depends on how big it is and that sort of thing. When you're thinking of cost, would you be thinking in that range for a basement apartment, about \$3,000 to \$5,000?

Mr Don McLean: Yes, that would be the ballpark figure, because we've had them in Sudbury also. You're probably talking about Chief Hare; he has had them also costed out. Because when we do basement apartments in Sudbury, we usually cost them out and give the owner at least an estimate of what it's going to cost so that he knows beforehand.

Mr David Johnson: I may be going a little bit more towards the front of your presentation. You mentioned the power of entry. This is of course a topic that's come up, and I think it's fairly crucial if these units are to be safe. You've indicated, I think, here that, "Powers must also be included in the Fire Marshals Act," to, I assume, allow you the power of entry to get in and inspect. Is that what you had in mind?

Mr Don McLean: That's correct, yes.

Mr David Johnson: You mentioned several different facets throughout, though they're certainly the typical kinds of things, the fire wall separations maybe you'd be looking at, but you also mention the wiring and you mention the problems with regard to Ontario Hydro and the fact that, I guess, the power supply is basically adding on to what's there already. It may not be safe; it may be home-done sort of wiring.

Under the power that you seek, the power of entry, would you have the authority to bring in other—what's the word I'm looking for here?—authorities, such as the Hydro, such as the property standards of the building department, if you see problems that pertain maybe to its jurisdiction as opposed to yours?

Mr Don McLean: Yes, we have that power right now when we're dealing with commercial and high-rises etc. We bring in Ontario Hydro in many instances basically. I also ask in here that they be licensed by the municipality so that we know where they are. Also, when you license them, then there will be the restriction that they have to meet the minimum guidelines, and part of the minimum guidelines would be that they have an Ontario Hydro check of the hydro service itself.

You're correct in the first instance. Most of these buildings have been built years ago and a lot of them are still sitting out there with 60, 100—

Mr David Johnson: Yes, 60 amps.

Mr Don McLean: Basically, you can't run two homes off that size of system. This is why we have some grave concerns towards the hydro.

Mr David Johnson: Is there a difference of opinion on that, though? I was certainly of the opinion—and I don't know if you know Chief Miller from East York?

Mr Don McLean: Yes.

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Mr David Johnson: It was always my impression that he felt somewhat limited in terms of, if his people could get in, what they could look for or what they could inspect for. They were limited to—I don't know if it's the Fire Marshals Act, but at any rate, their particular responsibilities. They really weren't allowed to look for property standards violations or that type of thing.

Mr Don McLean: I think every municipality is a little bit different. I was in fire prevention in the city of Sudbury for years before I became fire chief. We had no problem with bringing in authorities and having them in there. It may be that sometimes we may have overstepped our jurisdiction, but our concern was the life and safety of the people who were there. Basically, we didn't have that much of a problem. I know there are other municipalities, and Chief Miller's is probably one, where they do have some problems, but I can honestly say that in Sudbury we didn't have similar problems.

Mr David Johnson: Okay. I wanted to get into the exit business a little bit, because I think you said that you felt there should be two exits.

Mr Don McLean: That's correct.

Mr David Johnson: You have problems with many of the windows, apparently. You mentioned problems with window wells and that sort of thing. First of all, for a window to meet your specifications so that it could be considered as an exit, what would be the characteristics of such a window?

Mr Don McLean: We don't normally even attempt to give them windows as a second exit, but if we do, and we have on occasion because of older buildings, we have a restriction that they have to be a minimum of at least

three feet so that people can get out of them. Most of these windows that we're looking at now are probably 16 or 18 inches in width and they're roughly four and a half or five feet from grade level. So it makes it almost impossible for them to get out.

Mr David Johnson: Exactly. Three feet in width, with no window well. That kind of thing.

Mr Don McLean: That's correct.

Mr David Johnson: Other than that then, and most units wouldn't have that, you'd be looking at two doors somehow.

Mr Don McLean: That's correct.

Mr David Johnson: One door leading straight outside? What characteristics of the two doors would you need?

Mr Don McLean: In most cases, the other door would lead directly to the outside, because it would have to be cut out and also brought up to grade level. It would be an exterior staircase leading to the outside of the building.

Mr David Johnson: Okay, because many of these apartments are right underground, so you'd have to excavate them, put in a door, that kind of thing. Is that what you'd be recommending?

Mr Don McLean: That's right.

Mr David Johnson: I didn't sense that that's what the regulations were.

Mr Don McLean: No, they're not. That's one of the concerns that we're addressing. I'm not speaking about the fatalities they had out in Mississauga over the Christmas holidays, but in many cases where we've had fires—and we've had some deaths in basements—if there had been a secondary exit out of there, we would probably have saved some of those people. That's our concern.

Mr David Johnson: There's no question. Your comments with regard to the internal exit routes I think we can all understand, with the boots and the coats. Many of them are very narrow. What is the kind of width that you'd be looking for in an exit?

Mr Don McLean: We'd like to meet the same minimum width that is afforded us at the present time in the building code, and the minimum width of those is 42 inches. Basically, that's what we're looking for. Some of them are well within the 42 inches, and even if we could get something that's 36 inches, I think we'd have a compromise here. The thing is, if we can get someone to give us a 36-inch width, at least it's something that we could live with.

The other concern we have is that when those staircases become engulfed in fire—and in those staircases, because of the material they're using, the panelling etc, it's just a ball of fire that rolls—it makes it almost impossible for our firefighters to even get to the bottom of the stairs to help anyone who's in need in the building.

Mr David Johnson: And if they do get down there—

Mr Don McLean: If they do get down.

Mr David Johnson: —those stairwells are usually wood, I guess, and you'd have a heck of a time getting back out if there's just an 18-inch window, as you've

mentioned, and the stairwell is going up in flames.

Mr Don McLean: That's correct.

Mr David Johnson: So those are the kinds of things that you'd be recommending to the government to do. Under those circumstances then, any basement apartment, from a fire point of view, would be acceptable as long as it meets these kinds of restrictions.

Mr Don McLean: Right. All we're asking for in this brief is that we have some minimum life safety standards. Even by putting some of these standards in, it is not going to meet the requirements of the Ontario Building Code, but we feel at least we've got enough security in here that we will be able to live with this anyhow.

The Chair: Thank you, Mr Johnson. Mr Wilson and then Mr Mills.

Mr Gary Wilson: Thank you, Mr McLean, for coming to Toronto to give us this submission. I know you're doing it too on behalf of the Ontario fire chiefs' association.

Mr Don McLean: That's correct.

Mr Gary Wilson: I certainly found it an interesting presentation, although the one thing I found a bit regrettable is your focus, I guess, because it's in your title here, on apartments in basements. Of course, what we're after are accessory apartments; that is, in effect, two units in any dwelling, or at least a restricted number, and the ideas that the apartments could be anywhere in the house. So it isn't only in basements, although I realize that is a particular focus of concern.

I'd like to turn to that now partly because of one of the things that you say at the outset. It has come up that some people have suggested this is a Toronto problem and the legislation is a made-in-Toronto approach. You quite clearly say, "My municipality does not differ from any other municipality and all are subjected to basement apartments without proper and legal regulations or safeguards." Of course, that is what we're trying to do, to bring these apartments into the open, to make them legal so that we can apply some safeguards that will lead to a healthy and safe situation.

I'd like to turn then specifically to some of the things that you mentioned. First of all, I'd like to ask you whether you are aware of the draft regulations for the fire code that have been discussed this past year and that are due to come into effect when Bill 120 is passed.

Mr Don McLean: Yes, I'm aware of some of them, because when we have our executive meetings we speak at length on them and we have particular executive members of our association who sit on some of those committees. So basically we get an update on them on occasion.

Mr Gary Wilson: What's your opinion of the draft regulations?

Mr Don McLean: The opinion I would have to leave to our person who sits on that, but I know at some of the last meetings they felt there were some minimum changes that they would be able to live with. Basically, as I mentioned before, they come up at our executive meetings and they are discussed at length. The person who is

our chairperson on that committee is always attending the meetings and brings us up to date on the changes and proposed changes.

Mr Gary Wilson: Okay. As you know, there have been amendments to the building code as well last year, because up till 1993 there were no elements in the code that applied to second units. This is what it does. It specifically refers to issues of exit, for instance, and smoke detectors and fire separations. So those things are being considered and some standards are being set out, again with the building code and through the fire code.

Of course, the thing is whether the standards are going to be met. We expect that with second apartments being legal, people will come forward and apply for building codes to put them in and therefore have the inspection so that people can be assured that what has been put in place is safe.

The second way is that by legalizing them, people will be able to complain, the tenants in them already, if they feel something is unsafe. I think this is in part due to efforts like your own organization, which has gone into the community to make people aware of what is safe. In fact, just listening here, I realize, although we don't have a second apartment in our house, certainly we do a lot of living in the basement. I think that applies to any home, that people should be aware of conditions that exist in their basement so that they will be aware of what factors might be at play here.

I guess I want, though, to turn to the issue of access to them that people in your position need to make sure that places are up to standard or that good conditions exist. It seems to me that the powers of entry are quite firm or strong in the Fire Marshals Act as it exists now. I am just wondering what your experience with it is. Have you had problems getting into places that you think might have safety problems?

Mr Don McLean: I think we're no different than any other municipality. We've had problems but we've also had to get a warrant in order to get in, especially if we thought there was a life-threatening situation. But it's not always the easiest route to go because sometimes it's very difficult to get a search warrant, especially if you haven't been through the building and you are probably just getting it at second hand. So it makes it very difficult. That's why we're looking at the power of entry through the Fire Marshals Act. It would give us the right to enter at reasonable times and inspect if we thought there was a problem.

I'd like to also answer one of the questions that you mentioned a while ago, about the apartments only being a problem in Toronto. I don't know where that insinuation started, because the thing is, we have more than our share of basement apartments that are occupied by university students and elderly people. In years gone by we have not had a very high vacancy rate, so a lot of single-family dwellings in our city have installed basement apartments so they could accommodate university students, elderly people etc. We have the same problems as they have in Toronto—maybe not to the magnitude that they do here, but it is still a major problem in our city.

Mr Gary Wilson: That's what we found too, that it

does exist all over the province. That's why we feel this is a sensible approach to be taking to it. Certainly we value your coming here to tell us about the situation in Sudbury, because it does confirm that it does exist outside Toronto, and your experience with the issues that arise in second apartments is certainly going to be valuable to our deliberations. Thank you for coming. My colleague Gord Mills has a question he'd like to ask you.

Mr Mills: At last having made the list and the opportunity to speak, I'd like to thank my colleague for asking everything that I was going to ask. Nevertheless, I must make it clear here, chief, that I'm not speaking here in my capacity as the parliamentary assistant to the Solicitor General, because I don't want you to misconstrue my thoughts. Anybody who reads your recommendations has got to say they make good common sense, and I agree with that.

I do have a question about fairness and about the sprinklers. Everyone's talking about basement apartments; my colleague said basement apartments and the need to put sprinklers in there. It poses the question: Would we have to have sprinklers if the apartment wasn't in the basement? Would it be fair to say that all the other houses haven't got sprinklers, that they would have to have them?

Look at the use of our basements—my own as an example. We finished it, my grandchildren come over and sometimes they sleep down there. Would it be fair to say to me or would it be appropriate to say to all those situations, "You folks should have a sprinkler system in that type of containment when people sleep there," whether or not it's an apartment?.

1550

Mr Don McLean: I think we have to look at it realistically, that in your condition, when you have the grandchildren over, it's only a sporadic type of atmosphere that they're sleeping in there. Basically what we're looking at is in apartments, they live there, they cook in those units, they sleep in those units 365 days of the year, so it's a little bit different than what you are insinuating, and other people who have their grandchildren over for a couple of days. We don't see a problem there.

We're addressing a problem where they're in there for 365 days of the year. The cooking is probably the greatest concern because that's where a lot of our fires start, in stoves and grease on stoves etc. Basically I think I have to agree with you that the problem you brought up is not one of our major problems.

Mr Mills: What about when the apartment is not in the basement? Still sprinklers?

Mr Don McLean: I'm only looking at the sprinklers, as it mentions in here, for basement apartments because it affords them the opportunity then to at least get out of that basement apartment. We have had much success in our municipality in basement apartments.

There are still a lot of people out there who want to make sure their apartments meet the minimum life-saving standards. Some of them still have some morals and they call in the fire department and say, "I want to put a basement apartment in," and if it's legal, zoning etc, then

we will go to them and ask them to sprinkler at least the furnace room area and the electrical room area. We've had great success in doing it and at a very minimum costing. We haven't got the whole basement apartment sprinklered, but we have at least the area we're concerned with sprinklered.

Mr Mills: Okay, thanks very much, chief.

Mr Conway: Chief McLean, thank you for your presentation. Unlike many of the others in this committee, I don't have any expertise and very little sensitivity to many of these issues, since my constituency is largely very rural. But I've been listening over the last number of days to the submissions and they broadly fall into two categories: Either Bill 120 is the New Jerusalem of some tenants' rights advance or, on the other hand, it's some kind of nightmare that is going to substantially undermine neighbourhoods and threaten public safety.

Your brief raises, as did the brief yesterday from the chief of the fire department in Mississauga, very serious questions around public safety and I think, for the public at large, this issue, certainly in recent weeks because of certain tragic events, has focused on some of these public safety and, more specifically, fire safety issues.

My question to you really builds on something that one of the previous members was touching on and that is the proposed changes to the fire code. Let me ask you this: On the basis of the several concerns you have raised in this brief and what you know of the draft proposals for fire code changes, is it your considered opinion that the proposals being talked about and likely to be implemented will satisfy your concerns around most, if not all, of the issues contained in this brief?

Mr Don McLean: I think, and again, I'm just going to be repeating myself, that we did have a few concerns with the changes in it and they were addressed by our association. I feel with the proposed changes that we had, along with the paper, that our association could live with those changes.

Mr Conway: To the best of your knowledge, has the government indicated a willingness to accept additional amendments arising out of some of your ongoing concerns in terms of these draft regulations?

Mr Don McLean: They've been submitted and I think they're going through the proper procedures.

Mr Conway: Because the fire departments have raised in the public mind and in this place very real and significant concerns about this whole business, and we have no reason to doubt what you're telling us. The question we, it seems to me, have to address in the public interest is, are there mechanisms that are being contemplated that can be applied to essentially allay the concerns that you've outlined? I want to know from where you sit now that these proposed regulations that I presume will be brought forward will to the best of your knowledge address most of the concerns contained in this brief.

Mr Don McLean: It will address most of the concerns that we have and I'm probably not out of line in saying that it'll probably never meet the total requirement that we would like to see. I don't think there's any fire chief in the province of Ontario who would be happy

unless he could get the maximum, but what we're talking now is minimum life safety and, yes, we could live with it under the minimum life safety aspect.

Mr Conway: This has been obvious from some of the earlier questioning. There is a view of human psychology which seems to suggest that a number of the really serious problems in some of the long-standing and illegal accessory apartments are going to be substantially addressed because they will now be loudly and routinely complained of. Is that your expectation of how people will behave in places like greater Sudbury?

Mr Don McLean: I expect we're going to get some people who are going to do exactly what you said, because right now a lot of them are living in fear of being evicted from their apartments and we're talking here affordable rent and basically I can see that, not as the major problem, but I can see that being a problem in Sudbury where that's going to happen.

Mr Conway: I've been listening to the submissions. Apparently we've got just thousands of awful situations out there, jackpots of an indescribable horror. It's somewhat comforting to know that new accessory apartments will be governed by a new regime that will be as indicated. But we've got what, 47,000, is that the number somebody used? It's several tens of thousands of these illegal accessory apartments.

Mr Mills: A hundred thousand.

Mr David Johnson: No, 114,000.

Mr Conway: There's a pile of them and I've seen some of them in some of these university towns and they're not a pretty picture. I'm being told that most of that backlog, most of that problem is somehow going to be dealt with over time because people are now, because these are as-of-right, legalized units, simply going to come forward and municipal property standards people and fire folks like yourself are going to come forward and complain about these things and order either closure or compliance.

I just sit here and say to myself that I'm from Missouri and I'm a little sceptical that's going to happen to a substantial extent. I don't doubt that it will happen in a number of cases.

1600

Mr Don McLean: We're probably more fortunate than some of the other municipalities in that we have been afforded the opportunity to go into a lot of homes. Basically, we have asked for and have been well received by the owners, because they are putting up a lot of university students. We have a university in our city that's fairly large also and we run into quite a few of those problems.

Basically, as I mentioned before, we've been afforded the opportunity to at least clean some of them up. We don't have them all cleaned up, and I'll be the first to admit it, because we don't know where they all are. If we do get the licence so that we can get in and give the persons who are living there at least some minimum safety standards, then we would be happy.

The Chair: Thank you for appearing. The committee will consider the clause-by-clause beginning March 6.

CONCERNED CITIZENS FOR CIVIC AFFAIRS IN NORTH YORK

The Chair: The next presentation will be from the Concerned Citizens for Civic Affairs in North York. Introduce yourselves for the purposes of Hansard.

Mr Terence Sawyer: Good afternoon, Mr Chairman. Thank you for allowing us to be heard.

My name is Terence Sawyer. I'm the treasurer of that organization, and on my left is Mr Colin Williams, who's the president. We would be quite willing to answer any questions after our submission.

We are generally supportive of Bill 120, but we will be asking you to make changes in detail to that bill to reduce the hazards and to make a law of greater general benefit. Our comments are directed more to part IV of the bill and not to the one of care giving. However, we would like to point out to you that we feel in that area such provisions should be made for community involvement in those care provisions. It is the community that can monitor it far better than any committee coming from a central area.

We'd also like to feel that we were going towards a more law-abiding community and society. You've sat here for the last four days and listened to people talking about illegal apartments. It's rather interesting to me that they've allowed this to go on for so many years, and the current tendency is to eliminate that illegality.

We feel there's not the public will to enforce the bylaws. In our view, it's not healthy that we have laws on the books, whether dealing with land use, sales taxes, liquor or tobacco, which are openly ignored by a substantial number of people, and that includes government and local authorities. Equally, it is unhealthy that a law be enforced in an arbitrary or discriminatory manner.

In July 1993 there were changes made to the building code to adopt standards for basement apartments, and this bill proposes the legalization of such apartments. But it provides no mechanisms to encourage house owners to bring their properties up to standard, or for the municipalities to ensure that those standards are met.

We believe that registration is an essential part of this bill. We suggest that for a very small fee, the second dwelling unit in a detached house, semi-detached townhouse, be registered with the assessment department annually and recorded on the assessment roll. This would provide the municipal building department with cases possibly needing inspection. It would provide notice to the tax authorities that there may be some income from this situation.

To afford people like the fire department and others knowledge of what was in the building, we suggest that a small plate is put on the outside of the dwelling indicating that there is an A unit and a B unit, with names, whatever you prefer.

What we're afraid of, though, is this: When you start talking about basement apartments, these should not be taken away from the number of affordable housing units that are required in every city and municipality. In simple terms, if 10,000 units of affordable housing are required and 2,000 basement apartment are registered, you still

need 10,000 affordable housing units.

We feel that to encourage people to keep the law and to register their properties—although these illegal apartments have been going on with a nod and a wink for a very long time and they don't meet standards, even the reduced standards which applied in the new building code of 1993—we ask that these properties be brought up to standard. To encourage those people with these apartments, provision must be made to provide loans to the property owners. You can do this through the municipalities or the provincial government. Such loans would be a charge against the property, similar to a mortgage, and have a rate of interest slightly above the municipal debenture costs.

We hear of terms of enforcement. If you have a good law and it's fair, it is quite easy to enforce. Therefore, it is upon the municipalities, we believe, that the effort must be made to ensure that the rules of the game are simple and generally understood. We feel that municipalities have a great role to play in this, to inform property owners, which doesn't require a great deal of printing and all the other things. Twice a year, most of us get a tax assessment or the equivalent. In there could be a notation covering the requirement or the requirements for basement apartments.

Many municipalities have claimed that their powers of enforcement are not there. Funnily enough, the bill does not necessarily address this issue. Perhaps there's a need to provide guidelines in this direction as to what efforts should be made before a search warrant is issued and what you consider are reasonable grounds for issuing that warrant so that an ordinary person can understand them. Therefore, do we need such things as photographs or sworn evidence in front of a lawyer or something like that?

I sat here and I heard somebody talk about the real estate board. It's rather interesting when you see these advertisements in the paper from a regulatory body that advertises properties today and mentions quite openly that this property has a basement apartment. It's rather interesting that they contribute towards the illegality.

I'm not going over the previous speakers on egress, but the safety issue is one of prime importance, and we urge that you require that full standards of the building code apply. They were revised in July 1993 in recognition of the intent to legalize basement apartments.

I heard the chief from Sudbury speak, and he's quite right about exits, but I didn't hear him mention what we call crash bars or push bars, whatever you like to call them. No exit is of any use if you have to turn a handle; you must have a bar to get it open.

Again, it is a rather controversial issue, but we do not feel that handicapped people should be allowed to rent basement apartments. That is based upon what we know today about means of egress being limited through other parts of the house and what I would call limited and reduced access through windows.

I do not agree with the previous speaker who suggested that you needed a full doorway to get out of a basement; on the other hand, the provision of a window

or opening which must be of reasonable size, and I would say somewhere in the region of 30 inches wide and five feet deep, which doesn't come down to grade level but is quite accessible from outside and inside—you would have to provide, again, another staircase, but this need not be. The 42 inches which he was suggesting as the code, or 30 inches, something must be in the code to cover that.

1610

In that building code of July 1993 we felt that there was certainly weakening of standards, particularly with height in the basements, which we believe is limited to six feet, five inches. This, in our opinion, is a rather oppressive height. As I've mentioned, we do question basement windows for means of egress, but on the other hand they can be adapted to give a greater access without a great deal of expense.

You heard the previous speaker talking about sprinklers. Sprinklers can be provided for a lot less than \$3,000 to \$5,000 for a home unless, which is applied in factories and large apartment builders, you take directly off the street main. The ordinary household can take it straight off their own connection in through the service. There is no reason at all why it should go right back to the street. Therefore, I would suggest to you, Mr Chairman, and the others, that the \$3,000 to \$5,000 is an excessive sum.

I have read some of the reports about the problems which occurred in Mississauga and I wondered whether these are exaggerated in relation to the number of fires in households throughout the province. I heard them speak about smoke alarms, but a large majority of our homes today are heated with natural gas. One of the most essential features, we believe, in the basement apartment where you get a division of property is that you supply a gas alarm. A gas alarm will certainly indicate very quickly whether you have a problem. That's when you get out, even though you don't have a fire.

I'd like to go to property maintenance standards. Since the regulations have not yet been published, it is not clear what powers a municipality will retain to ensure that exterior changes are compatible with a neighbourhood. Adequate onsite parking: We have tremendous problems in Metro and probably in other cities where parking is not adequate. If you provide these apartments, then you must have a standard for parking. Similarly, landscaping and paved areas outside the homes must comply with local zoning bylaws.

We believe the municipalities should have the leading role in this development and in the maintenance of them in their communities. There should be clear policies from the province which set out the ground rules which permit and encourage the municipal role.

Regarding occupancy, what we have found is that where these supposed illegal apartments prevail, you have an absentee landlord. We feel that the property owner must occupy part of that residence on a continuous basis. The absentee landlord unfortunately does not keep the community in good order. This owner occupancy of the building is not an unreasonable restriction for the enormous change in living patterns which is proposed in the bill. Similarly, to provide for the death of the owner, ownership by the person's estate could be permitted for,

say, two years. I'm certain that all of you are aware that when development does progress in a city, there are what we know as blockbusters who come in to basically run down the community. We are afraid that perhaps this may be a disruptive effect on the neighbourhood.

In conclusion, we recommend these thoughts to you for consideration and we are quite prepared to answer any questions you may raise.

Mr Owens: I'd like to thank you, Mr Sawyer, for your thoughtful presentation. One of the issues that has caused, I guess, some level of concern for the folks in my riding in the city of Scarborough is this issue of owner occupancy and how do you deal with a non-owner-occupied dwelling in terms of the property standards and the other issues that may arise. I haven't yet come up with an answer. I just have no ideas in terms of why we would want to treat a property based on owner occupancy differently in terms of property standards.

For instance, in the city of Don Mills, where your association is located, how do you deal with a home owner who resides on the premises but doesn't cut his or her lawn, who has parties that last until 2 or 3 in the morning and all the other attendant difficulties, and why would we be wanting to deal with these properties in a different way than we would deal with either properties with basement apartments or those that are not owner-occupied?

Mr Colin Williams: Our feeling is that where there is owner occupancy, the owner is going to give greater attention to the needs of the neighbourhood than where there's an absentee landlord. Our suggestion is that it be a requirement that the owner of the property be one of the occupants of the two premises. Regarding your general inquiry about the situation in the city of North York, where we live, the city has building standards and these standards are enforced from time to time.

Mr Owens: In terms of, again, zoning by occupancy or allowing these basement apartments or accessory units by occupancy, how would you envision a regulation or a clause in the bill that would address what I view as the potential for multiple situations and variables with respect to when the owner is in residence? Are you talking about family members, or how do you define "owner"? Is there a period of occupation?

I see in your brief you've talked about how in the event of death the estate could be permitted to rent the premises for a period of two years. That's one potential situation, but I just see that there are a number of issues that I just really don't have an understanding of how you would address through regulation or legislation.

Mr Williams: I would have thought it would be fairly simple to have a rule—I'm no lawyer—that says it's illegal to subdivide a property which is not occupied by the owner of that property. It must be fairly simple to say that in legalistic words.

Mr Owens: But is that a fair way to deal with accommodation needs across the province, just a blanket statement? You're right, it is a very simple statement and a very easy way to deal with it, but in terms of fairness and the ability to deal with a person's particular needs

with respect to housing, I'm not sure how, again, that would be sensitive to those needs.

Mr Williams: It's our feeling that—

Mr Owens: I'm not a lawyer either, by the way. Maybe that's why we can sort this through.

1620

Mr Williams: Okay. It's our feeling that the number of such cases where there are absentee landlords is relatively small compared with the tens of thousands that were mentioned before. However, there's the probability that this proportion would grow if these are legalized, which they are of course not at the present time. If there's proper registration, as we're suggesting here, then it seems to us there's some measure of control.

Mr Owens: Yes, I'm intrigued—

The Chair: Thank you, Mr Owens.

Mr Conway: Thank you, gentlemen, for a very interesting submission with a lot of thought-provoking advice. I just have really one general question. Unlike, for example, my friend here from Don Mills who's had a long and distinguished career in municipal government, I've had none of that. I've spent my time in politics at the provincial level.

One of the things that has struck me about things like municipal bylaw enforcement and some of those issues is that, by and large, my experience is that most people are fairly well behaved most of the time but, I'll tell you, you encounter—and I've been in this place now for the better part of 18, 19 years and my sense of it is that examples of non-compliance and misconduct are probably increasing a bit. Some of it is just so absolutely indescribably flagrant that, I've got to tell you, if I were on a municipal government or a local enforcement person I don't think I could be relied upon to respond within the limits of the law because some people just do the damndest things. Their concept of citizenship and community is, to say the very least, idiosyncratic and, to say the most—well, I won't say the most.

You rightly raise the questions towards the restoration of a law-abiding society and compliance. I wonder, what do we do with those individuals? They rightly feel this is a pluralistic society and that your concept of noise and my concept of noise, your concept of art and my—I remember on my street one day a few years ago somebody took an old toilet bowl and planted it right on the front lawn as a statement of artistic merit. I thought it was kind of interesting. Now, not too many people on the street agreed with him. In fact, there was quite a lively debate.

That is a very modest example. As I say, some of the examples are just so outrageous and the question is, what do we do about that? I think my friend Johnson here and others on local government might say there is redress. If you've got an endless amount of time and money, we can do something, but that's going to be a charge on the overwhelming majority of the rest of you in Don Mills or wherever else because you pay the bill and I'm your trustee.

What do we do about that as elected officials? How do we try to create a better sense of citizenship and culture?

We seem to have come to a point where everybody's out there madly pursuing individual rights and "Don't trouble me with any sense of a corresponding community responsibility. If you do, I'm going to take you through every tribunal and appellate court in the land to prove that I'm right and you're wrong."

Mr Williams: You raise a number of interesting thoughts and I'll try to respond to these. I'd like to respond briefly and then turn over to my colleague.

The first point is that municipalities have claimed that their existing powers of enforcement are inadequate. To the layman, sometimes, there's a suspicion that this is more an excuse than a reason, but it seems to me that this is something that should be addressed and it does not appear to be addressed in this bill.

Mr Sawyer: I believe you have that degree of enforcement, but I believe that local communities, excluding wherever we're talking about, do not follow this, you see.

My question to anybody regarding law enforcement is very, very simple: How many car drivers have broken the speeding law and never been picked up? They know it's illegal and I think if you all volunteered to go and pay your fine, you'd save the police a lot of jobs and that sort of thing. So you have the enforcement there but it is not being followed. People are just walking away from it.

Mr David Johnson: I add my thanks for your presentation today. Actually, I think that with the whole package that you presented, if it were possible, it would be accepted by a large percentage of the population as perhaps a reasonable compromise. The critical aspect at the end in terms of the owner occupancy I suspect is one that the government (a) is not too interested in, and (b) will, and I'll admit, have some difficulty with, because having been at the municipal level, I know it's the advice I've received, that that will be a difficult one to implement. It's not quite as simple as just saying that those who own a property can divide and those who don't can't. There has to be a legal mechanism behind it to do it. Certainly the legal advice I've had in the past is that it will be difficult. But I think it points out, and it's probably your experience, that the problems municipalities are facing around this whole issue largely come where there is an absentee landlord.

Mr Williams: There's another meeting going on here. I'm sorry.

Mr David Johnson: Well, you can ignore them.

Mr Williams: It's very difficult to concentrate.

Mr David Johnson: I don't know what your experience has been here having dealt with North York, but certainly in East York, and I believe North York as well, the bulk of the problems come where there's an absentee landlord. That's purely a fact of life at the municipal level. What experience have you had in that regard?

Mr Williams: I don't think we have specific experience, but it is commonly accepted and there are some examples. I know of it. People who live in the premises they own look after them more carefully than others, and with greater concern for the effect of their activities on their neighbours.

Mr David Johnson: One other large benefit is that they're easier to get hold of. If there's a problem, you know where to get them, whereas if they're an absentee owner, then they may live heaven knows where. Tracking them down and getting their attention and getting action is most difficult.

I can tell you that the process the municipalities have to go through is (a) to notify them, and then they're allowed a certain period of time, by law they have to have a certain period of time, and then you follow up with an inspection, with an inspector who's very busy and doing a lot of other inspections at the same time. If nothing has happened, then there's a notice of violation and another period of time hence to transpire, and then I think it's a notice to comply beyond that and another period of time. We're not talking a couple of days. By law, you have to allow generally a month in between. Then you run into of course the winter period, and if some of the work requires outside activity, generally you have to give until the spring to do it. There's also a property standards tribunal that enters into the fray and it can further delay the whole thing.

Once one problem is resolved, what can happen then is, where you have the kind of person Mr Conway was talking about who's not a good citizen, another violation pops up two minutes after the first one has gone through the whole process, which may also involve the court system. So it's a very difficult system.

I don't know if this is a question or not, but—

Mr Gary Wilson: It hasn't been so far.

Mr David Johnson: This is why municipalities are complaining. It's just like pulling teeth to get any action on the property standards problems and zoning problems. I think you're very right to say, if that's what you are saying, that a resolution could be to have the property owner-occupied and have municipalities have more authority. In that case, what you put forward just might work.

Mr Sawyer: That is what we are suggesting.

The Chair: Thank you, gentlemen, for appearing today. As I've told other presenters, the clause-by-clause consideration of this bill commences March 6.

1630

CITY OF BRAMPTON

The Chair: The final presentation today is from the city of Brampton. Good afternoon. The committee has allocated 30 minutes for your presentation. If you would like to begin by introducing each of the people at the table for the purposes of Hansard, that would be appreciated. We always appreciate some time for dialogue following the presentation. You may begin.

Mr Peter Robertson: Good afternoon. My name is Peter Robertson. I'm the mayor of the city of Brampton. I'm here with Councillor Richards, Councillor Hunter, Mr Carl Brawley and Cathy Saunders, members of our staff.

I wish to express the city of Brampton's concerns to you with respect to Bill 120. As you will hear in the presentation which will be made by Councillor Richards, the city of Brampton has been actively involved in attempting to resolve the problems of accessory or

basement apartments for a number of years. It established several public forums and committees, and Peter's going to report to you about that.

I hope that you will fully consider the comments we're about to make with respect to Bill 120 and give the local municipalities the right to have some degree of control over their own destiny.

We're really here today to discuss the relationship we have with you, potentially a workable partnership between municipalities and the provincial government. The outcome will be a statement or a measure of the province's trust in our competence and our accountability as a municipality.

There is a clear consensus among municipal leaders that we are capable of regulating and managing the issue of accessory apartments if we are given the tools. It is essential that the province stop invading the basic powers and roles of the municipal government. We're the only level of government that is capable of implementing the planning of a community. It should be the province's role to listen and to provide legislation and regulations and tools for us at the municipal level to build sound communities.

With those comments, I introduce Peter Richards.

Mr Peter Richards: Good afternoon. I'm a city councillor of Brampton. I'm also chair of the accessory and basement apartment ad hoc committee. I'd like to thank you very much for having us this afternoon. I'd also like to thank the support from our two local reps, Mr Callahan and Carman McClelland, for showing up. We appreciate it.

The city of Brampton has always been a supporter of housing intensification and affordable housing initiatives. Our municipality is known as a forerunner in innovative housing types, with numerous existing and proposed affordable housing units in our city.

Within our community we have created a zoning category which would permit convertible accessory dwellings in residential buildings. These units have been placed in areas that can accommodate the additional population and traffic that would be generated from these units.

Bill 120 appears to suggest that municipalities such as Brampton have not been actively pursuing the initiatives set out in the housing policy statement to provide areas of intensification and affordability with respect to residential development. This is simply not the case.

Bill 120 is a broad-brush piece of legislation that would ultimately create extreme difficulties in proactively planning for these intensified units, as we have been doing, and instead leaves municipalities with the responsibility of reacting when it will be too late to provide adequate services for the residents of these units.

Bill 120 appears to represent a provincial mandate to force municipalities to comply with the municipal housing policy statement without adequately considering the consequences.

We continue to stress that not every municipality is structured or has the same needs as Metro Toronto. Bill 120 seems, however, to reflect a Metro Toronto frame of

mind. Each and every municipality has its own uniqueness with respect to transportation accessibility, environmental features and economic base. You cannot generically impose these specific regulations on all municipalities. Who better to understand the needs and character of the municipality than its residents and political representatives?

It would seem that the province, through the recent recommendations from the Sewell commission, agrees that municipalities should be given more autonomy in planning their own development, that the province would set very broad policy directions and municipalities would be responsible for local interpretation and implementation. This bill, however, completely contradicts this initiative.

To make matters worse, the method of consultation in this matter has been inadequately handled, with little notice for response and very little, if any, attempt by the province to educate the public about this bill and its implications. The concept of due public process has been ignored with this proposed legislation.

It would appear that the province will place the responsibility on the municipality to hold public meetings after the fact. To go through the process and make the public believe that they actually have some valuable input into the planning process is unjust. By the time this input is requested, the legislation forcing the municipality to amend zoning bylaws and official plans will be in place and comments from the public at that point will have absolutely no impact on whether or not these amendments are enacted.

Many residents of Brampton purchased their homes with the belief they had purchased in an area that would remain low density. In fact, many paid higher prices for their property to ensure that this would take place. Those rights will be completely removed from those residents. How will these people be compensated for the loss of their property rights?

The province, through Bill 120, is proposing to impose on the municipality accessory dwelling units without providing a method of collecting revenue to supply community services for these residents.

The city of Brampton and numerous other municipalities have supplied the province with an analysis of the impact that these units will have on municipal services. Without these needed funds, services which may already be lacking will suffer that much more. We continue to request that the municipality, either through licensing, the Development Charges Act or the Assessment Act, be given the legislative jurisdiction to generate much-needed revenue.

There are a number of planning uses with respect to this bill. The amendments proposed to the Planning Act will make it virtually impossible to properly plan our community. We will have no method of determining the number of residents residing in any one given area of the city, making it impossible to plan for adequate services such as roads, especially schools, and recreational facilities.

The bill offers no real difference in the intent of the

definitions of lodging houses and accessory units, leaving the area neighbours to live with an unlimited number of people in any one household, creating parking problems, among other things.

The province appears to have failed to consider the rights of property owners with the introduction of this bill. Although we all agree that those less fortunate should have the right to housing, the rights of property owners seem to have been ignored. You cannot implement this type of legislation by totally ignoring one sector of the community.

Perhaps the most direct impact to be felt by the as-of-right provision for accessory apartments is the safety of the tenants residing in them. The province claims to have introduced Bill 120 to ensure the rights and safety of tenants in these units. It is our belief that this legislation will do the opposite.

At least under current zoning and property standard bylaws, the city can require owners to bring their accessory units up to standards or remove them when right of entry has been achieved. If Bill 120 is passed as proposed, only new units will meet the code standards, assuming that a building permit is applied for. All those existing substandard units and any new ones constructed without permits will continue to exist with the protection of the new legislation. The tenants of these units will remain in danger.

What makes the province believe that creating legislation to make these units legal will bring those owners who have units or want to construct units into city hall to apply for a building permit? The Ontario Building Code has recently been amended to add additional standards relating to accessory units. Does the province honestly believe that those owners will be applying for permits to retrofit their existing units at additional expense to their investment? Even those who are proposing to construct units will be reluctant to apply for permits as they will have to comply with more restrictive building standards. This bill appears to be simply a mirage of people's good intentions.

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The reality of the situation is that there are in fact unsafe units existing, and more will be constructed despite this bill. These unsafe units will, however, have the protection of Bill 120, making it even more difficult for the municipality to ensure that the units are safe.

If the intent of the province is to sincerely protect the rights and safety of the residents of these units, then give the municipality the right to do exactly that. Give us the right to enter these units and require that they be retrofitted to meet the Ontario Building Code requirements for second units. There are numerous pieces of legislation that give inspectors right of entry. These officials use their judgement and discretion to conduct inspections. Trust the municipal bylaw officer to carry out his or her duty with the same discretion. Allow us to license or register these units to ensure that the safe conditions of those units will continue.

Let's deal with realities. People have died in these types of units, and if the province does not give the

municipality the right to protect the tenants through retrofitting, then more will die. That unfortunately is reality, as we all saw in a recent fire in Mississauga. At the very least, the province should not make any decision on Bill 120 until the current inquest into the Mississauga deaths has been finalized, and recommendations of the same are fully reviewed and considered by the province.

In closing, I am sure these concerns are not new to you, but perhaps it should say something to you if consistency in concerns prevail.

To be blunt, the city of Brampton is terrified of this legislation. We acknowledge that the province is attempting to make affordable rental housing available to residents of Ontario. This government, however, needs to fully consider the implications of this legislation, not only on the municipalities' ability to adequately plan their communities but most importantly on the health and safety of the occupants of these units.

We ask you to fully consider not only our comments but those of Ontario residents, other municipalities and agencies who really do care about their communities.

Mr Robert V. Callahan (Brampton South): First of all, I'd like to say that during the Peterson government, this municipality, my municipality, did put 25% affordable housing in its official plan. I think in that respect they've done a great deal to provide housing. The Peel Non-Profit Housing Corp in Peel is outstanding as an issue of providing affordable housing.

The difficulty I saw arising was when the legislation, in order to get a search warrant, said you had to search and seize. It would be simple enough to simply change that to search and/or seize and allow the proper search warrants to be obtained so that evidence could be obtained of illegality, not for purposes of prosecution but for purposes of making the accommodation safe.

It seems to me what's happening here is you're trying to impose a Toronto scenario or a Toronto solution to a problem that doesn't exist for every person in the province of Ontario. It may well be one for Toronto, but for Brampton, where we have in some cases 40-foot lots, we could very easily have a significant fire that would make the Chicago fire look like a picnic.

You could put in ways of dealing with it in terms of establishing evidence to determine that there's illegality. In the Sunday shopping legislation, we put in the fact that if an advertisement appeared in the paper indicating Sunday shopping, that was evidence sufficient to get a search warrant.

What I suggest to you, and I think my municipality has put it forward very well in a very significant brief, is that in order to solve a problem which has been one that no government of any political stripe has dealt with, you could deal with it very easily in the way I've suggested.

I think by doing it the way you're doing it, you're actually expropriating value from people in my community without compensation. Our municipality is quite prepared to allow basement apartments in heretofore unzoned areas in order to accommodate the cost of affordable housing, but what this government is doing is unprecedented. It flies in the face of all English justice

and equity. In fact, you're taking value away from people and you're not compensating them. I suggest you think twice about it because it may come back to haunt you.

Mr Carman McClelland (Brampton North): How much time do we have left?

The Chair: About three minutes, or maybe two and a half.

Mr McClelland: Two minutes, okay. A couple of quick questions. I want to touch base—thank you, lady and gentleman and friends, for being here. There are three points but I think we'd be better, in terms of time, to limit it to two.

I want your comments with respect to the issue of adequate services and the accountability and potential liability that would rest with the municipality which would, on one hand, be compelled, without the tools of planning and provision of services, and then being held accountable to provide those services if, God forbid, another tragedy—where accountability would rest and subsequent liability.

The other thing I'd invite your comment on is with respect to the economies that are involved either with Bill 120 or ultimately, in the absence of the proper tools given to the municipality to license and therefore inventory the number of individuals and units in a community—it seems to me that what you have there is just an open invitation for a lot of cash economy taking place.

I'd appreciate your comments, not only with respect to the impact on the municipal economy, but the economy generally and the transactions that take place there. Perhaps Councillor Hunter, mayor, Councillor Richards—however you choose to address those two points, liability and the economic issues. There is another one, but I don't think we have time to deal with it.

Mr Richards: I'll just take it and, by all means, anybody else can answer on this. I'd like to take a quick stab with an example regarding the economy and this underground cash flow that seems to be going on. I've a friend who lives in a semi and he gets a £24-a-month pension from England. This has to be declared on his income tax as income.

However, adjacent to him is a gentleman who has a basement adjacent, an accessory unit, who's receiving \$900 a month for this unit and nowhere does that show up as income. Nowhere does that show up for anything that has to be taxed.

A couple of questions: Can the tenant then put in for his Ontario rebate? What happens to this cash that this gentleman is receiving? There seems to be an underground economy here going on. That was my assertion.

Mr Robertson: I'll just jump in with the school issue. We haven't found a way of financing schools in a new and growing community. Your government hasn't found a way either. We're behind in the construction of schools, as you know. We rely on school buses and portables as the solution.

The issue is: If basement apartments or accessory apartments are going to be approximately 10,000 families in Brampton, isn't it reasonable to allow the municipality to share with the school board some degree of revenue,

whether by licensing or some other format as a way of counting how many children are coming into the school system and then helping to pay the bills?

That's the economic reality in our community. We can't plan for the children in schools and then we can't build the schools.

Mr David Johnson: I just want to say up front that I'm getting a little bit of an inferiority complex here, everybody talking about this as being a Metropolitan Toronto problem.

I want to assure you that the municipalities in Metropolitan Toronto are equally concerned about this as in Brampton. We've heard from London and Hamilton and many other municipalities right across the province of Ontario. I think it's almost unanimous.

It's the perception of the government that if this goes through, which in all likelihood it will, tenants will come forward in great numbers and will demand an inspection of their accessory apartment. In that way municipalities like Brampton will then go in and make sure that everything is up to par. I wonder what your reaction about that assumption is.

Mr Robertson: I think Peter addressed it well in his report. He said that because it will likely cost money to bring it up to code, that likely won't happen.

Mr David Johnson: From some of the deputations we've heard, there could be a considerable amount of money involved—water sprinkling I guess is one aspect and exits and that sort of thing.

Another area involves the right of entry of the municipality, which of course today is extremely limited. It's the government's opinion that Bill 120 contains additional powers of right of entry and essentially resolves the municipal concern about not having an adequate right of entry into these sorts of properties. I wonder what your reaction to that is.

1650

Mr Richards: It seems to me that to obtain a warrant for entry there has to be something wrong. There has to be an offence committed against a bylaw or what have you. If these are legal, what are our grounds—excuse me, it's a legal basement—they have legalized these, whether it's an old one, new one or what it is, they're legal. What are our grounds now to obtain a warrant? That's where we're coming from. They say it might be easier to obtain a warrant. For what, if it's legal? I realize it can be split down a little bit more; there might be a concern whether it meets code and everything else but you don't know that if you don't officially know that the apartment's there and are not given the wherewithal to officially know that apartment is there. So again—

Mr David Johnson: I've lived through this, certainly, from my former role—

Mr Richards: It's catch-22.

Mr David Johnson: —and I know the frustration of bylaw staff, fire staff, zoning inspectors, you name it, from the municipal level and you really just can't get in today. It's my estimate, and I see you're winding up for a response, that under this bill it's very marginally improved, if at all.

Mr Robertson: If you trust the provincial assessment department to go in and look at the home, we're asking for the same kind of rights and trust, that our staff will be able to go in and make the place safe. That's what we're interested in. If you have to go and line up to get a search warrant—1,600 search warrants, 10,000 families—what kind of bureaucracy are you building there?

Mr David Johnson: It's going to be impossible. I know the situation.

In Brampton, I think you mentioned that you had zoned certain areas, have you, for accessory apartments up to this point?

Mr Robertson: Yes, we have.

Mr David Johnson: So you've taken actions. You've already tackled the program. We've heard that you have been responsive in terms of affordable housing, and maybe you would tell us what you've done to start with and what your reaction is to when the government says that municipalities are not being responsive in terms of affordable housing or dealing with this whole area.

Mr Richards: Brampton certainly has been a forerunner in this. The Springdale community has what we call convertibles, which are accessory units. The parking has been planned, everything has been planned out so that this is not an upset to the community.

Also, the people moving into this community are warned that these things are there. So it's not a matter of building into, say, an R1 and all of a sudden you're inundated with basement apartments. They know that certain numbers of these are already there, plus we have the quadruplexes. Quadruplexes are there, so yes, we've certainly taken a forerunner at this.

Mr Carl Brawley: If I can just add to that, Peter. Basically, we're using the zone in new development areas like greenfield situations, but we established the standards in the zone in a manner in which we would come back into the builtup area and on a neighbourhood-by-neighbourhood basis, with that neighbourhood's input, potentially apply that zone in the builtup areas as well. So we would come back through and retrofit the existing city, so to speak.

The Chair: Thank you, Mr Johnson. Mr Wilson.

Mr Gary Wilson: Thank you, delegation, for the presentation. It certainly raised some important issues and we'll certainly take them into consideration as we discuss the bill and as it goes to clause-by-clause, but I'd like to discuss some of the issues with you that you have raised. I'd like to go back right to the beginning, actually, to the title of the bill, which is called Residents' Rights Act. What we're attempting to do is treat all tenants equally as they would in any kind of accommodation.

Mr Robertson: Is that all residents or all tenants?

Mr Gary Wilson: All tenants equally.

Mr Robertson: Wouldn't that be called then fair tenants' rights?

Mr Gary Wilson: Residents' rights. This is the high-light, that we're trying to bring up tenants to the same rights that residents have throughout the community. This comes to, and I'll again highlight this, the issue of

licensing; that is, other units in the municipality aren't licensed. What you seem to be proposing to do is just license accessory apartments, which would create problems for tenants in those apartments because they then run the risk of the owner losing the licence, which would cast their occupancy into jeopardy. It's not done anywhere else; no other accommodation is licensed. So this is one of the problems we see with the licensing approach.

Also, there's no incentive for property owners to license their accessory apartment because that means added cost and possible problems through the licensing agency. So it's through reasons like this that again, going back to—

Mr Robertson: Gary, can I interrupt?

Mr Gary Wilson: Sure.

Mr Robertson: I think you missed our point. We're not really keen on licensing it per se. We're looking at how we can get a count of the people. How can we count the number of people who go to school and how can we find a source of revenue?

When you have an apartment that is in an apartment building, in practical terms you get development levies and then you get taxes. Somebody pays the bill. In a basement apartment nobody pays the bill. That's what we're addressing. If you can find, as a committee, a better way than licensing, then that's fine, but we really need to have them pay some bills.

Mr Gary Wilson: The estimates, I think, in Brampton are 5,000 to 8,000 illegal accessory apartments.

Mr Robertson: That's what your staff said, but we're way over 10,000.

Mr Gary Wilson: You're over 10,000. So you're not getting any revenue from those, right?

Mr Robertson: Not at all.

Mr Gary Wilson: That's why we see our proposal, bringing these apartments to make them legal, at least allows the opportunity for revenue.

Mr Robertson: How? How do you get revenue?

Mr Gary Wilson: By making them legal there is more of an incentive for the municipality to know they exist. It's as simple as that. As it is now, you don't know.

Mr Robertson: How?

Mr Gary Wilson: There's going to be a divide here: the accommodation that's there already, the accessory apartments there, the ones that will be created after. It's true the ones that are created after Bill 120 comes into effect will be much easier to find because they will go through the building permit process which puts them on—

Mr Richards: Not necessarily, Gary; I'm sorry.

Mr Gary Wilson: Not necessarily, but—

Mr Robertson: Very few of them have come in for a building permit.

Mr Gary Wilson: Not yet. Of course they haven't, but that's because they're illegal. Once they're legalized, then the incentive will be there.

Mr Robertson: But then what do we do, collect \$23

for a building permit? How do you pay for their schooling?

Mr Gary Wilson: Again, they will generate some revenue. Our figures show that there will be revenue from taxes that are paid on the property because of the value of the apartment.

Mr Robertson: That's \$50. Can you educate a kid for \$50?

Mr Gary Wilson: It can be as high as \$250—

Mr Richards: Excuse me, Gary, if I may. The difference between a house that has a finished basement, a finished rec room, and a house that has a basement apartment in it, the assessable difference is \$52. We worked it out on a house, a normal-size house. That does not educate, that does not pay for the municipal services, the extras. We have to have a way of being compensated.

As the mayor referred to, if you had an apartment building that had 50 units in it, they would be charged development charges and taxes on that building. If you have a street now with 50 basement apartments on it—I've got one that's close to that—you're saying, "Oh no, that's no extra charge to the municipality." Well, it certainly is. What's the difference between the \$50, okay? We have to have a way of knowing they're there and having some form of revenue from it.

Mr Gary Wilson: We agree entirely that you have to have some way, but at the moment you don't because they're illegal.

Mr Richards: I think we use the word "mirage," because people are definitely not going to be charging into city hall to get a building permit to take away from their investment already, to standardize their house, which has already been redone, redone to codes. So a guy's going to rush in and say: "This is a great opportunity. I can now go spend \$6,000, retrofit my place." For what? He doesn't have to. He can go retrofit it himself, if he wishes to. But he doesn't have to. We appreciate that if it's caught and all that then, fine, he's in trouble. But, again, how do you catch him if you don't know he's legally there?

Interjection.

Mr Richards: How do you get into his home, exactly, if it's legal?

Mr Gary Wilson: Yes, but there are several ways. The tenant, first of all, has a great interest in knowing whether the accommodation is safe. Up till now, because it's illegal, they have a great risk bringing it to the attention of the municipal authorities.

Mr Richards: I'm not an expert on the Landlord and Tenant Act, but we have always said that if you're in a basement apartment you get a lease and there are protections under that lease, whether it's a legal basement apartment or not, and they have a way to get back at their landlord through that. That hasn't changed any. I think this is again a mirage that people are going to rush in and get permits. It's not so. We have to have a way of knowing they're there.

Mr Gary Wilson: It won't happen unless they are legalized. I'd like to leave a bit of time for Steve Owens.

The Chair: Thank you. The time has expired.

Mr Owens: On a point of order, Mr Chair: I think there has been some misinterpretation with respect to the powers of the entry as envisioned by Bill 12, and I'd like ministry staff to provide a clarification to the committee.

The Chair: We can certainly entertain that once we've said goodbye to our presenters. Thank you very much for appearing today. We appreciate your presentation. The clause-by-clause review of this bill will commence in the week of March 6.

Mr Owens has requested that the ministry provide some information. Do we have consent for that? Agreed.

Mr Owens: Bob, listen to this. This is important.

Mr Callahan: Is that right?

Mr Owens: Your interpretation is not correct.

1700

Mr Callahan: All right. If it's earth-shaking, like the withdrawal of the bill, I'll be happy to sit down.

Mr Douglas: James Douglas, Ministry of Housing. The Planning Act is amended in Bill 120 to create a separate class of search warrant for Planning Act offences. Up to the present, the Planning Act has relied on the Provincial Offences Act.

What this new class of search warrant does is remove the requirement that the person applying for a search warrant specify the evidence to be seized. This will facilitate the issuance of search warrants by a justice of the peace or a provincial court judge. However, it is still necessary for the person applying for the search warrant to show reasonable grounds that an offence has been committed.

Mr Callahan: Does it still contain "search and seize," and if it does, what the devil are you seizing in an illegal apartment?

Mr Douglas: That's the point. It no longer requires that you seize evidence. That is gone.

Mr Callahan: What is the exact wording?

Mr Douglas: The wording says you can apply for a search warrant to search the premises. The seizure of evidence is optional now; is not mandatory.

Mr Callahan: Why don't we just leave it at that? That at least helps the problem along. I don't know why you got to hammer the thing to death.

Mr David Johnson: The problem is still the reasonable grounds, though, proving reasonable grounds, and the experience in the past is that you have to go in and see and have somebody say, "I was in, I saw a violation," or "I saw a problem," or whatever, and then the judge will accept that. It's a catch-22. You go to the door, and you're denied entry. So you can't get the sort of evidence you need to prove reasonable grounds to get the entry.

Mr Douglas: The Attorney General has advised that municipal bylaws that would allow people to enter a property without just cause would quite likely be contrary to the Constitution. The Charter of Rights has been interpreted to mean that people have a right to a high degree of privacy in their place of residence. The Fire Marshals Act allows for searches without a warrant, but that's because it is deemed that fire offences are a

genuine threat to life and safety. Similarly, under the Building Code Act, there's provision for a warrantless entry in emergency situations.

Mr David Johnson: But when you boil it all down, the right of entry has changed very little under this, under normal circumstances.

The Chair: I think right now we're looking for clarification. I can envision a lively debate as we go through the clause-by-clause on this particular section. Mr Owens, further clarification?

Mr Owens: As a non-lawyer, I'd like to ask ministry staff, is it not the view of counsel that simply moving from language with respect to seizure to the test of reasonableness is a significant move and that there is a body of jurisprudence with respect to tests of reasonableness that would be applied in cases such as this?

Mr Douglas: There is an extensive body of common law which indicates what "reasonableness" means, and organizations such as the Ontario Association of Property

Standards Officers have indicated support for this change.

Mr Owens: In terms of the comments made with respect to a burgeoning bureaucracy, it is in fact the view of the courts that a person's civil liberties are more important to the individual within this country and in this province than—

Mr Callahan: So are their property rights, which you're taking away without compensation.

Mr Owens: Private property is not an issue under discussion at this point; we're talking about the powers of entry, and you ask your constituents—

The Chair: I am certainly looking forward to clause-by-clause examination of this particular section.

Mr Callahan: You guys have never heard of the Magna Carta.

The Chair: Thank you very much for providing that enlightening clarification. I would remind members that the committee reconvenes at 9 am Tuesday in Ottawa.

The committee adjourned at 1706.

Continued from overleaf

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- *Mammoliti, George (Yorkview ND)
- Morrow, Mark (Wentworth East/-Est ND)
- Sorbara, Gregory S. (York Centre L)
- Wessinger, Paul (Simcoe Centre ND)
- White, Drummond (Durham Centre ND)

**In attendance / présents*

Substitutions present/ Membres remplaçants présents:

Conway, Sean G. (Renfrew North/-Nord L) for Mr Sorbara
Mills, Gordon (Durham East/-Est ND) for Mr Morrow
Owens, Stephen (Scarborough Centre ND) for Mr Dadamo
Wilson, Gary, (Kingston and The Islands/Kingston et Les Iles ND) for Mr Wessinger
Winninger, David (London South/-Sud ND) for Mr White

Also taking part / Autres participants et participantes:

Callahan, Robert V. (Brampton South/-Sud L)
Cunningham, Dianne (London North/-Nord PC)
McClelland, Carman (Brampton North/-Nord L)
Ministry of Housing:
Gigantes, Hon Evelyn, minister
Douglas, James, policy advisor, housing development and buildings branch
Dowler, Rob, manager, planning and development policy, housing advocacy and planning branch
Wilson, Gary, parliamentary assistant to the minister

Clerk / Greffier: Carrozza, Franco

Staff / Personnel: Richmond, Jerry M., research officer, Legislative Research Service

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Tuesday 25 January 1994

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Mardi 25 janvier 1994

Standing committee on general government

Residents' Rights Act, 1993

Comité permanent des affaires gouvernementales

Loi de 1993 modifiant des lois
en ce qui concerne
les immeubles d'habitation

Chair: Michael A. Brown
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STANDING COMMITTEE ON GENERAL GOVERNMENT

Tuesday 25 January 1994

The committee met at 0904 in the Delta Hotel, Ottawa.

RESIDENTS' RIGHTS ACT, 1993

LOI DE 1993 MODIFIANT DES LOIS

EN CE QUI CONCERNE

LES IMMEUBLES D'HABITATION

Consideration of Bill 120, An Act to amend certain statutes concerning residential property / Projet de loi 120, Loi modifiant certaines lois en ce qui concerne les immeubles d'habitation.

CITY OF OTTAWA

The Chair (Mr Michael A. Brown): The purpose of the committee meeting this morning is to hear public deputations with regard to Bill 120. The first presentation this morning will come from the mayor of the city of Ottawa, Jacquelin Holzman. The committee has allocated one half-hour for your presentation. We always appreciate some time to discuss your comments. You may begin.

Mrs Holzman: Thank you for being here to listen to the community. My understanding is that even my own community association hasn't been able to get on the schedule, so I know there are many who want to talk to you because this is something that's of great concern.

To put it in one sentence, in my view, Bill 120 should be withdrawn and revised. The bill deals with two issues that are of great importance to me, but in ways which cause me great concern.

The first issue is residential intensification. Ottawa city council has been dealing with this issue for some time now through our official plan process. Council is firmly in favour of residential intensification where it is appropriate, but this legislation tells city council and many community groups that we do not know, and cannot know, what is best for our own neighbourhoods. This legislation tells us that once again Toronto knows best. On behalf of the residents of Ottawa, our community groups and Ottawa city council, I am stating for the record that we reject the idea that Toronto knows best.

The second issue that I'm going to be addressing is the protection of vulnerable people in care homes.

For nine years I was chairman of the regional municipality's homes for the aged. I was also chairman of a provincial advisory committee on rest homes and retirement homes that presented its report to the minister for senior citizens' affairs in April 1989. The problems identified five years ago and again in the Lightman report are largely, and sadly, unaddressed by this proposed legislation.

I am confident that I speak for many people involved in the care of vulnerable people, including the families of residents, the workers in care facilities, social workers and care givers who go into these facilities. I believe that the 47,000 vulnerable persons in care homes in Ontario are entitled to legislative protection that is tailor-made to address their problems.

On both of these issues, residential intensification and

the protection of vulnerable persons in care homes, Bill 120 is a great disappointment.

Speaking to residential intensification, the proposed legislation would permit the addition of one apartment unit in every detached, semidetached and row house in Ottawa.

Throughout the city, our residents insist that intensification not be allowed to degrade the quality of life in a neighbourhood. But in some neighbourhoods in Ottawa, like mine, the sewer system is already overloaded and we are engaged in a major long-term program of sewer improvements. In some areas, basements are occasionally flooded with raw sewage backed up from overloaded sewers. All this makes it clear that local control is essential for the safety and health of our residents.

Specifically, there are five key areas of concern that I have with respect to the residential intensification aspect of Bill 120.

First, non-resident landlords: A fundamental flaw in the legislation is that it cannot require that one of the units be owner-occupied. This could lead to blockbusting. A large percentage of Ottawa's property standards complaints come from properties that are not owner-occupied. Increased property standards concerns will result from a lack of firsthand awareness of problems. The issue of community pride and sense of ownership, the erosion of community values, is not addressed.

The city of Ottawa recommends that municipalities be permitted to require owner occupancy as a condition of the creation of accessory units.

The second area, performance standards: Existing performance standards must be maintained, for example, the fire code, which would avoid the problem that just happened in Mississauga; the building code; minimum standards as specified in zoning bylaws; parking standards, to name just a few.

Specifically regarding zoning, lot size and area must be maintained. Tandem parking is not a preferred method of achieving parking requirements. It can lead to illegal front yard parking. Front yard parking is discouraged because of concerns about the environment, safety and aesthetics.

In many areas of Ottawa, residential parking is already a problem. Many houses in the downtown core were built before it was common for a family to own a car, whereas today it is common to own two or more cars per family. Adding an apartment to each residential unit will increase the demand for parking on streets and in the front yard of many homes. Habitual parking problems will not make life in our communities better, and the loss of front yard green space will degrade the quality of life in our urban community. Apartments in houses should be encouraged only when they fit into community values, community ambiance and community services. This is best determined by municipalities using the Planning Act.

Regarding fire and property standards, over the last five years, 52% of Ottawa's major fires have occurred in single, semidetached and row houses, the specific housing types to which this proposed legislation applies. Suggested standards for retrofitting these housing types to accommodate an additional unit are less than the standards for new construction; instead, the standards should be improved, not reduced.

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The city of Ottawa has specific concerns in the area of egress—the second means of escape may be through another unit or through a small-size window—and secondly, concerns with the whole question of smoke detectors. The preferred option would be interconnected smoke alarms rather than battery operated smoke detectors from which the batteries can and are frequently removed.

Additional resources will be required to conduct inspections required by this legislation.

The third area is intensification. The city of Ottawa supports extensive intensification as a means of providing additional housing units while taking advantage of existing infrastructure. There are many ways to encourage intensification, apartments in houses being just one.

The province, in forcing this particular form of intensification throughout the city without recognizing the standards and nuances of individual neighbourhoods, could seriously jeopardize community support for other forms of intensification such as infill, redevelopment and affordable housing such as non-profit and co-ops etc.

The fourth area is the area of municipal responsibilities. Bill 120 legislation allows the province to establish regulations setting maximum property standards and municipal zoning standards in certain areas and prohibiting other standards altogether. The provincial regulations would replace the standards in local bylaws which conflict with the provincial standard. The province is treading on municipal turf with Bill 120.

The average taxpayer is already confused about which level of government is responsible for which issue and this jurisdictional confusion will only be increased by legislation in which the province becomes involved in an issue that is clearly a municipal responsibility.

Local official plan policy, zoning bylaws, property standards: These must continue to be municipal responsibilities in order that such standards may be tailored to and reflect existing local development patterns. Bill 120 overrides the community consultation requirements of these issues and removes accountability from duly elected local councillors.

The effect of the proposed legislation is, in essence, to strip municipalities of their authority under the Planning Act to regulate local residential zoning matters, such as permitted uses, housing form and density.

The fifth area of concern, the provincial housing statement: The sense is that the apartments-in-homes legislation is a response to what the province perceives to be a slow response from municipalities to the provincial housing statement. I would like to take this opportunity to correct this perception.

As I indicated earlier, the city of Ottawa supports extensive intensification as a way of taking advantage of existing infrastructure and getting the most value out of infrastructure tax dollars. However, there are three reasons why the city of Ottawa may appear to have been slow in responding to this policy.

First, it takes time to put in place the proper procedures, such as a comprehensive official plan and zoning bylaws. Our own new official plan demonstrates Ottawa's commitment to intensification. The plan is currently awaiting approval by the regional municipality of Ottawa-Carleton. Our commitment is there but the planning process is slowing us down.

Second, the country is currently in a recession. Private sector development dollars are presently in short supply. Time is required to allow the economy to catch up with intensification process and policies.

Third, it takes time for public acceptance of a new approach. Time is required to reverse the trend to suburban expansion. Time is required to accept different standards for city living. Community culture cannot change overnight. It is unrealistic to expect that it will.

As illustration of some of the points I have raised, just consider for a moment a neighbourhood like Glabar Park, my neighbourhood. Glabar Park is currently zoned single-family and there are some 1,500 homes in the area of about 100 hectares, certainly low density. I moved into that area in 1957.

The proposed legislation would allow each one of the 1,500 homes to become a double unit. Traffic on local streets would surely increase. It could even double. There are few streets with storm sewers and the sanitary sewers could well be inadequate to handle the increased load. As well, the water pressure is very low in some sections of my neighbourhood, and local schools are already crowded.

For the past 10 years, Glabar Park's neighbourhood groups have been fighting the expansion of a nearby shopping centre because of the fear of, among other things, increased traffic on local streets. To justify the expansion of the shopping centre before the OMB, extensive environmental studies, including traffic studies, were required.

Bill 120 promises to allow an extra 1,500 residential units to be added to our community without any assessment of the environmental, social or economic impact. No provision is made for community groups to express their views with any sense that they will be considered in the decision-making process. For my neighbourhood, as for all neighbourhoods in Ottawa, the insensitivity of Bill 120 presents a real threat.

Bill 120 rezones my property, my neighbourhood, my city, with a stroke of a pen from Queen's Park, with no staff report from our city, no public hearing, no city council approval and no appeal mechanism, while every rezoning application, even in my own neighbourhood, to create a duplex, every zoning application in this city, goes through an agonizing scrutiny and public participation. It's not unusual that it will take over a year, and many times more, and that is even for those applications

that council is ultimately going to approve. This totally violates that whole process.

The other area I want to speak to regarding Bill 120 is also one that I'm quite aware of, and that's the protection of vulnerable people in care homes.

This government has a responsibility to pass legislation that will help protect the 47,000 vulnerable people in care homes across the province. Bill 120 does not even attempt to address the real problems in care homes. Specifically, it does not address the problems of the quality of care in congregate living. In fact, in my opinion, this legislation will make matters worse, not better. There is a saying that a doctor's treatment should at least not make the patient worse. I fear this legislation will create more problems than it solves.

While the exact number of persons in Ottawa who will be affected by the proposed bill is not known, the 116 residences currently registered in the city as special-needs housing accommodate 2,132 people. This number includes close to 900 people with severe and persistent mental illness currently living in supportive housing, such as supervised boarding homes and other programs.

In addition, an estimated 1,800 seniors live in various care facilities, making a total of almost 4,000 vulnerable people in care facilities in Ottawa. I really don't want to see their lives made worse by inappropriate legislation.

A good start in making this legislation more appropriate would be to include a care home section in the Landlord and Tenant Act and a care home section in the Rent Control Act. With these two sections, the desirable objectives of the acts could be achieved in a way that recognizes the reality of the congregate living situation and tries to achieve a proper balance between individual rights and the rights of fellow residents.

Let me just give you two little anecdotes to illustrate the reality of congregate living in two well-run facilities, one providing residential care and the other a seniors' apartment building for independent living, but with support services offered.

A lady in the residential care facility maintained her physical vigour to an amazing degree and she was well into her 80s. However, she was becoming cognitively impaired, and this led her to be disruptive in the care building. One of her favourite acts of misbehaviour was to hit other residents with her cane. She would also use her cane to hoist their dresses. So she was really becoming difficult in congregate living situations.

The professional staff knew this lady was no longer a suitable resident for the residential home. The local geriatric assessment unit was called in and they agreed. When the placement coordination service found her a new residence, she was placed without delay.

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The Landlord and Tenant Act as proposed would not have protected this lady but would have made the situation worse. Her family would have been liable for at least two months' rent, and she could well have taken the care managers to court and resisted the move for a long time.

In the second scenario, a recently widowed man is

living in a seniors' apartment building. He's lost his driver's licence because he has memory lapses. He was driving without a licence until his family took away his car. He doesn't eat well and he's losing weight. Food is rotting in his refrigerator. He doesn't wash regularly. His apartment is a mess and it's infested. In the common areas of the building, he is disruptive. His family is unable to handle the stress.

The geriatric assessment unit once again has recommended that he be moved into a residential care facility where he should be able to function adequately in the more structured environment. The challenge for all involved is to get him to move. He doesn't want to, but it is clear to all informed people that it is in his best interests to move.

The proposed legislation will not make the life of this gentleman any better. More likely it will make it worse. The legislation provides no mechanism for conflict resolution other than eviction, and if challenged, this could be a long and costly process.

The Ontario Residential Care Association has highlighted this in its brief and I fully endorse it. As an absolute minimum, I recommend that Bill 120 be amended to ensure that care home operators can evict without long notice when an adverse assessment has been made by a body comparable to our geriatric assessment unit. In such eviction cases, the government should be the body required by statute to provide alternative appropriate accommodation.

The other report I spoke to briefly was Rest and Retirement: A Report on the Regulation of Residential Care Facilities. It was prepared by the Advisory Committee on Rest Homes for the minister responsible for senior citizens' affairs. It was submitted in April 1989 and I was the chairman of this advisory committee. There are so many things in here dealing with this vulnerable population and I urge you to go through it.

In conclusion, I say that the residents of Ottawa are entitled to control the development of their communities through the municipal planning process. The Toronto knows best solution, as proposed by Bill 120, is unacceptable to Ottawa. Residential intensification may be desirable, but it cannot be made the right of any and all home owners.

On vulnerable people, there are 47,000 living in care homes in Ontario. They're entitled to legislation that makes their living situations better, not worse. Improper eviction is a problem and we know that, but Bill 120 is not the answer.

In conclusion, I ask that Bill 120 be withdrawn and revised.

The Chair: We have only three minutes per party.

Mr Bernard Grandmaitre (Ottawa East): Madam Mayor, welcome. Your presentation this morning is a very good one, but one we've heard repeatedly in the last week. People are very concerned about Bill 120, but yours is a little different. I want to point out that on page 2 of your presentation you refer to the non-resident landlords. You say, "A fundamental flaw in the legislation is that it cannot require that one of the units be

owner-occupied." Can you tell us, how can the government, how can this committee, how would you write the legislation to impose this on owners, that they should occupy at least one of the units?

Mrs Holzman: I think you quoted where it says the problems, and that is one of the problems. You can't legislate that one of the units be owner-occupied, but non-resident landlords have created an exceptional problem with many of our property standards, the quality of the buildings. That's not to say that all non-resident landlords are a problem. I'm simply saying that here is just another example of Bill 120 not being realistic.

Mr Hans Daigeler (Nepean): I appreciate, Mayor, your opposition to Bill 120, but would you not see an obvious pattern here that runs through not just this legislation but other legislation as well, that as with Bill 77 as well, we have an obvious attempt here to diminish, as you indicated yourself, and possibly even eliminate the powers of local government, that the provincial government knows best, as you said in your brief, and takes away the powers and the responsibilities and the decision-making of the people who are elected at the local level?

Mrs Holzman: I'm glad you mentioned Bill 77. I didn't know how I was going to weave it into my conversation. That was going to be my parting note.

Mr Grandmaitre: Now it's on the table.

Mrs Holzman: Bill 77 has had far more involvement and discussion, every municipality, the region, community groups, business community, landlords, board of trade—

Mr Daigeler: They said they don't like it.

Mrs Holzman: —all are coming onside to say that—

Mr Daigeler: That is not true; Ottawa says so.

Mrs Holzman: —the regional municipality of Ottawa-Carleton has too many municipalities, has too many mayors, has too much government, too much bureaucracy, too many school boards.

Mr Daigeler: You say that, but not Nepean.

Mrs Holzman: You mentioned Bill 77, and thank you for allowing me the opportunity.

What we see as far as Bill 120 is concerned is that Bill 120 is trying to resolve a problem in Toronto. In Toronto, there's a major problem with a lot of illegal units. If I may, since I don't have this in writing, I would like to tell you that we believe Bill 120 is trying to resolve a problem that's prevalent in Toronto. Toronto has thousands, millions, I don't know how many illegal basement apartment units. We don't have that in this city. We don't have the problem that you have in Toronto and that the mayor of Toronto will speak to when she speaks to you, so we don't need a Toronto-type of legislation to be imposed on Ottawa.

Yes, we are working towards intensification. Yes, we are working to have infill and group building projects and all of the other methods of having more people living in the city of Ottawa, getting them closer to their jobs, getting them out of their cars etc. But Bill 120 isn't the answer to our problem; it may be the answer to Toronto's problem.

Mr David Johnson (Don Mills): As a former mayor within Metropolitan Toronto, I can say that most if not all of the Metro municipalities agree with you; not that it's a Toronto problem, but the problems that you've raised. I want to congratulate you and say that you've expressed what just about every mayor we've heard is expressing: the concern that the provincial government is running roughshod over local planning, the concern that the municipalities are dealing with intensification in their own way.

I think we have to recognize that each municipality is different and each municipality is making a concerted effort to deal with housing, intensification and affordable housing in a proper manner to suit its community, considering the services, the sewers, parking etc. I think that's a consistent message.

I wonder if you would briefly comment on the right of entry. You haven't mentioned that. This is a concern many municipalities have raised, that they do not have authority to enter to ensure that standards are proper in the basement apartments.

Mrs Holzman: Your first point was that each municipality is trying to solve its problems. Yes, each municipality is trying to solve its housing problems, and we don't need provincial legislation like Bill 120 to do this.

The right of entry is absolutely critical. When you're dealing with individuals who are vulnerable, who are in care, the right of entry has to be immediate. If you believe that there is somebody in a residential care facility who has collapsed, or worse, you've got to have immediate entry.

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Mrs Margaret Marland (Mississauga South): Mayor Holzman, it's interesting that in your brief you talk about the province treading on municipal turf. It suggests that they're galloping on it. When you're talking about the fact that apartments in houses should be encouraged where they fit into community values, you also talk about community ambience. I'd like to ask you what your reaction is, as mayor of your municipality, to the Minister of Housing's comment that what the municipalities are doing with their zoning bylaw is in fact snob zoning.

Mrs Holzman: I certainly would never comment on what the minister is saying about our zoning bylaw. I would simply say that my planning committee and our councils have been criticized for years that we are anti-development or pro-development, usually anti-development, that our process is so convoluted, that there's such a lot of indecision and that if we don't speed up and make our zoning process better, people are going to walk away, so I have to be faced with that.

I know that anybody who wants to come forward and put a third unit in a duplex in our city, if it's not allowed by zone, has to go through a horrendous process, and frequently we turn it down. We turn it down because it's too crowded in the neighbourhood, because the water supply isn't adequate, because the sewers may not be adequate, because we don't want cars parking in front yards.

Mrs Marland: But is it elitist? Is it elitist to say that

we can't have any zoning in this province that permits one unit per lot?

Mrs Holzman: My brief does not speak about that at all. My brief talks about the fact that people in all neighbourhoods are concerned about front yards. They want grass in the front yards. They don't want rows and rows of cars parking in the front yard. In fact, council has approved a bylaw that says you have to have a certain amount of green space in a front yard. This has nothing to do with élitism. This is all over my city.

Mr Stephen Owens (Scarborough Centre): I'd like to go back to the question Mrs Marland asked you. It's a vision question. As the chief executive officer of this city, you say: "Apartments in houses should be encouraged only where they fit into community values, community ambience and community services. This is best determined by the municipalities using the Planning Act." Your worship, can you describe for me your vision as to where these accessory units would fit?

Mrs Holzman: I draw your attention to the top of page 2, for example, regarding zoning: "Lot size and area must be maintained. Tandem parking is not a preferred method of achieving requirements." I'd already spoken about front yard parking.

We're very concerned that we have some ability to look at fire standards and property standards etc. Those are what I mean by "fit." I don't mean by "fit" that you can squeeze in a unit. That's not what I mean by "fit." It means having regard to all of the other environmental issues that I've raised in my brief.

Mr Owens: I certainly wish I had more time, but I'll yield the floor to my colleague Mr Fletcher.

Mr Derek Fletcher (Guelph): It's a pleasure to be in Ottawa again. I always enjoy coming to Ottawa.

Mr Grandmaître: That's good.

Mr Fletcher: Well, it's a beautiful city.

As mayor, you're close to the people in your city. I'm just wondering, have you had a lot of people say that once Bill 120 is passed they're going to rush out and start building accessory apartments in their homes? Is there going to be a major flood of people doing this that you've heard of?

Mrs Holzman: Even if there is one, city council has the responsibility to approve, or not, changes of zoning. You are taking that responsibility away from city council.

When a shopping centre wants to change its zoning or when somebody wants to build an apartment building on top of a residential piece of property, why are they not allowed the same consideration by the provincial government? They have to abide by the Municipal Act, by the Planning Act, by our bylaws, and that means city council is responsible for change in zonings. This is a change of zoning, nothing more than a change of zoning with the brush of a pen from Queen's Park.

Mr Fletcher: As you know, this committee is travelling around and also meeting in Toronto. It is legislation that can be amended, will be amended, will be changed, and that is why we are travelling around, to hear what people are saying about the proposed legisla-

tion. The public consultation that's going on now is very important to drafting a good piece of legislation. I want to thank you for your input. It's been very valuable.

Mrs Holzman: Thank you very much. Do support Bill 77. City council's position is clear.

The Chair: Thank you very much for making that presentation to the committee.

Mr Joseph Cordiano (Lawrence): On a point of order, Mr Chair: I thought I heard that the government is willing to amend this legislation. I would ask the minister if that is her intention.

The Chair: It isn't a point of order, but—

Hon Evelyn Gigantes (Minister of Housing): It's not a point of order.

The Chair: It's not a point of order.

FEDERATION OF OTTAWA-CARLETON
TENANTS ASSOCIATIONS

The Chair: The next presentation will come from the Federation of Ottawa-Carleton Tenants Associations, Mr McIntyre. Good morning. It's good to see you again.

Mr Dan McIntyre: The last time we had a chat was about rent control.

The Chair: I think we had two chats, both in this room perhaps, about rent control.

You've been allocated one half-hour for your presentation. As you know, the committee likes to have a conversation about that presentation during that half-hour.

Mr McIntyre: Thank you, and hello to everybody; a lot of familiar faces and friends around the table and a few new ones.

As the Chair has stated, my name is Dan McIntyre. I'm the executive director of the Federation of Ottawa-Carleton Tenants Associations. We're now in our 12th year of representing the interests of tenants in the Ottawa area. We've spoken to this committee or other types of committees on many pieces of legislation in the past and we welcome the opportunity to speak about this one this morning.

The federation supports the passage of Bill 120. This bill will have a net positive effect on the supply of safe, affordable housing and it will extend rights to the most vulnerable of tenants. This legislation is win-win. There are several kinds of winners and most of these are due to the apartments-in-houses provisions of the bill.

The winners: First of all, tenants who need affordable housing; lots of those. Apartments in houses create another choice. This housing should be affordable and we expect that most home owners will make good and fair landlords. Tenants will be protected by the Landlord and Tenant Act, the Rent Control Act and municipal property standards. Many people who are currently on lengthy waiting lists for subsidized housing could be served by this legislation.

Home owners are winners in this legislation. There are home owners who could use some extra money. We've often been told in discussions surrounding property taxes of various areas of reform, and hopefully we won't get into that too much, but many people in our community are asset rich and cash poor. We know that average

household sizes have been reduced by over one person per household.

There are empty-nesters who could make use of the space that was used by their now-grown children. There are people who are having real difficulty paying their mortgages and/or their property tax. There are often first-time home buyers who may need extra income to realize their dream home. There are people who just like the chance of earning some extra money, and this is an opportunity presented to them.

Landlords must earn their income. That's a position we've held for many years. It's not that you just open the doors and the money rolls in. Home owners must realize that a tenant pays rent to have a well-maintained and comfortable home. The landlord is being paid to provide that. It is another issue to deal with those who would take the benefits of owning an income property and not meet their responsibility.

Tenants and home owners living unlawfully: The original draft said "living in sin," but we thought we'd tone it down a bit. All of the reasons for this bill have existed for many years. That's why thousands of illegal units exist today. These units and the people in them will now be legitimized and brought under the protection of relevant tenant legislation. Further, tenants living in unsafe conditions or with low-quality landlords will be able to seek improvements with much less fear of losing their home.

Supporters of property rights: Most home owners will have no interest in this and will not participate in this opportunity. That will be their choice. However, many of those will take the position that it should be the right of their neighbour to provide this type of unit if they so choose. Many already take a live and let live approach.

Senior citizens: The granny flat provisions are particularly for them, as well as the tenant provisions, and this will enable more seniors to live in a happy, comfortable neighbourhood situation.

Vulnerable tenants: The extending of rights to tenants living in care facilities enhances their ability to live in dignity and enjoy security of tenure as do other tenants. As in many cases, those providers who are reputable should have no real problem with these extensions.

Are there losers with Bill 120? There certainly are opponents. Some have called this the death of the single-family home. Others have said this will put a strain on infrastructure. Others claim that streets will be clogged with cars. Some say that tenants ruin neighbourhoods. Municipalities—the mayor this morning—have said that this infringes on their rights to plan and to zone. Others worry about absentee landlords. Obviously, we don't buy the views of these opponents, and let me deal with those issues in order.

The death of the single-family home has been much exaggerated. Single-family homes have been around longer than Confederation and will be with us for evermore. They exist because there is a market for them. People who want to buy these houses and live in them with their own family will not be impeded. However, what has ended is a right to insist that every other

household on your street be just like yours. By the way, Bill 120 is not the only thing that ends that.

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The strain on infrastructure: Household sizes have decreased. This bill allows for creation of one apartment in a house within existing walls. It does not allow for adding on to houses etc. The bill does not create people but does enable better use of existing housing space. The infrastructure was designed for that space.

Parking problems: Parking spaces have been built and can be regulated by site plans by the municipality for the existing housing. Many families have two or more cars now; many do not. A tenant with a car is not going to rent a unit if parking can't be made available. Street parking can be regulated.

Tenants ruin neighbourhoods: Much of this concern is rooted in prejudice, and I'm sure none of the members would take that view. There are people who are less concerned with their neighbourhood than others. Some are home owners and some are tenants. Tenants can be evicted; home owners can't. We submit that a clean, healthy environment will be respected by most people.

Absentee landlords: As I say, actually, this one does concern us, but Bill 120 doesn't change this much. There are absentee landlords now: duplexes and much larger properties, as a matter of fact. Right now, a property owner can rent out a single-family home in its entirety.

I'm not here to debate the merit, but she mentioned Glabar Park. If I had the money, I could go buy a home in her community and rent it out to somebody in its entirety. There's no provision saying it can't be rented out now. The owner could rent it out to the Hell's Angels, and there's nothing the neighbours can do about that.

The answer lies in enforcing laws rather than restricting rights. The main one I would refer to is the property standard bylaw, which is a municipal responsibility, and no one foresees that changing in our lifetime, I guess.

The city of Ottawa currently spends about \$6 per year per residential unit to enforce its property standards bylaw. While the city of Ottawa, as compared to other cities, has a very good record on property standards, that's inadequate and relatively typical. This bylaw is the answer to property standards and it needs more resources for enforcement. That's where your answer lies.

To deal with the municipalities' rights and obligations to zone and plan, we understand and appreciate where the mayor's coming from and other mayors who have come before you, and AMO, and the concerns of municipalities that their domain has been invaded. It would have been preferable if municipalities had been able to fully act on the very strong suggestions of the previous government to implement this on their own, but they didn't. Instead, we find ourselves in a jurisdiction dispute.

If the politicians at the cities and the province want to have fights, the parties will fight, and I find politics a great sport to watch, but this is one that tenants want to take a pass on. People who need this housing and can provide this housing and are needing this housing and are providing this housing don't want to be in the middle of a political fight. They'd rather get on with their lives. We

don't want to be denied because of a jurisdiction dispute.

Municipalities will know that they still control official plans, property standards, site plans, most zoning matters, building permits and adjustments. They will also know that they have always been subject to provincial override by the Ontario Municipal Board and have therefore never had an absolute right in these matters.

Tenant organizations, community groups and politicians have been talking about affordable housing for years. This bill is not the ultimate remedy, but it helps. We ask you to expedite passage without further delay and without amendment.

Mrs Marland: Mr McIntyre, you've certainly made some very interesting statements, to say the least. I particularly like the comment about, "Landlords must earn their income."

Mr McIntyre: As do you, and as do I.

Mrs Marland: Landlords also make a significant investment in order to provide housing of any type for tenants to reside in. For those of us who have been tenants, we are very grateful that landlords make an investment.

Unfortunately, we don't have enough time for me to ask all the questions I'd like to ask you, but you talk about an infrastructure being designed for the space that is within a single-unit home. That's a very interesting comment. I don't know what your background is in municipal planning or municipal bylaws, but certainly the infrastructure is designed for what was approved when that house was given a building permit. Single-family homes are given building permits with one kitchen, to start with, so that does have an impact.

You also go on to say, "Tenants can be evicted." You have to have been a home owner and have had a tenant and tried to evict them for anything other than non-payment of rent. The fact that you're saying this is a good way for first-time home buyers to have extra income to realize their dream home—I know personally seven constituents who have lost their dream home because they couldn't evict their tenants and their tenants were not paying their rent. The income from that extra unit was the security for that young couple to pay their mortgage. They had to default on their mortgage because it took them 10 months to evict that tenant for non-payment of rent.

The main question I wanted to ask you is that you're focusing on the property standards bylaw, and unfortunately I didn't get the act open soon enough to locate where it is in this act. You're saying that the property standards bylaw is the bylaw that is the answer and it needs more resources for enforcement. The property standards bylaw is one of several bylaws that this bill exempts. The fact is that the very tools you're saying the municipality has to control problems are exempted by this act and I wondered if you knew that.

Mr McIntyre: What I know is that the property standard bylaw for the city of Ottawa, the city of Nepean, the city of Gloucester, the city of Vanier applies to rental properties, home-ownership properties on a wide basis to ensure that they meet minimum standards. There are a

series of officers who are empowered to go and enforce that legislation and are only limited by resources. The buildings that would create apartments in houses would be covered by property standards under this legislation.

Mrs Marland: But the fact is that where the act says those bylaws cannot—

Mr McIntyre: You cannot pass a property standard bylaw that makes it impossible to create an apartment in the house. What you can do is create property standard bylaws—I think we have property standard bylaws—that, for example, provide for requirements for lighting, working electricity, heating, wiring, utilities, all sorts of matters of safety to the resident and to the occupier of the home. That's not going to change. In fact, it's going to be better for those people currently a little bit afraid to pick up the phone because their unit is illegal.

Mrs Marland: You're saying the property standards bylaw—I'm only going by what you've said—

Mr McIntyre: Which is a city bylaw.

Mrs Marland: I'm quite familiar with the fact that it's a city bylaw. The point I'm making is that you're saying that's the solution. What I'm suggesting to you is that there are a whole lot of bylaws, including the property standards bylaw, that are exempt under this act. This act supersedes all of these other municipal powers that come under the Planning Act and the Municipal Act. You can't on the one hand say, "Well, we're going to use it here but we're not going to use it there," which is in fact what is happening with Bill 120.

Mr McIntyre: I gather you get to make that speech several times around the province. Let me assure you—

Mrs Marland: I'll pass, Mr Chairman. I don't wish to continue this discussion.

Mr George Mammoliti (Yorkview): Let him answer the question.

Mr David Winninger (London South): Do you want to cut him off?

Mr McIntyre: In the 30 minutes that I have—
Interjection.

The Chair: Order. Mr McIntyre has the floor.

Mrs Marland: I've been ill for five days.

The Chair: Order, Mrs Marland.

Mrs Marland: It's the first day I've been on the committee so your comments about making a speech around the province are a little inappropriate.

Mr McIntyre: My point is that I have 30 minutes and you're making a speech full of holes. I would simply like to say that the property standard bylaw of the city of Ottawa will cover all the properties that would happen in the city of Ottawa. The bylaw in Nepean—I can't remember, Mr Daigeler, if it's still just zones, different areas for the bylaw, but the one in Vanier and Gloucester is all-inclusive and therefore this will be extra protection to make sure that these are safe houses, that these are places people can live in, pay the rent and know that if there is a problem, the municipality has the responsibility.

My point is that the municipality is not putting as much into the resources needed for that bylaw, but that's

another debate. That's not something the province has any control over. So property standards will exist and we look forward to protecting the tenants who will live in these houses.

0950

Mr Mammoliti: Nice to see you again, Mr McIntyre. I take great offence when I go around the province and hear the mayors pitting one group against another. In my particular municipality, the mayor of the city of North York said that this legislation will have people fighting with knives, I think the quote was, in the streets.

Mr McIntyre: That doesn't happen now?

Mr Mammoliti: He's obviously trying to pit the tenants against the home owners with that remark. Today we heard from the mayor of Ottawa who, in my opinion anyway, clearly tried to pit Metro against Ottawa, and I take great offence to that. I'm a resident of Metro and I don't think that this piece of legislation does that at all. I'm glad to see that you touched on that in your brief.

But your mayor also said that we're taking all the rights away from council with this legislation. I heard nothing positive from your mayor about this legislation.

Mr McIntyre: Mr Mammoliti, I'm a little reluctant to listen to your political speech on this as well. Let's get the politics out of this. Let's get it done.

Mr Mammoliti: What positive things would this piece of legislation bring to the council in Ottawa?

Mr McIntyre: There are a number of our councillors who support this legislation. I don't know if a formal vote has been taken, but I know the councillor for Wellington ward supports it. I haven't spoken to George Brown, who's a friend of mine, who's fought for affordable housing in this community for years. A number of councillors would find a lot of pleasure in this.

I've been in territorial battles that were in different parts of my life and, yes, it hurts a little bit if somebody says, "We're going to do it this way." That's the way it goes, though. If you guys want to fight among yourselves, if you want to fight with the municipalities, which want to fight with you, go ahead. But tenants need housing; they need affordable housing. There are some home owners out there who can provide it.

The ultimate irony, in my opinion, is that there will not be a heavy take-up on this. There will be a few new units created where people want it and that will be good. To suggest it's going to overrun communities is a problem.

I understand the mayor's position. I certainly understand the concerns of safety and everything else. The bottom line is that I don't agree with the conclusion she's reached on this, and I think that home owners and tenants who will benefit from this legislation will not either.

Mr Owens: I represent the riding of Scarborough Centre. There's an informal calculation of approximately 10,000 accessory units in Scarborough. I want to follow up on something you said in terms of the take-up.

There seems to be a view expressed here this morning by your mayor and other municipal representatives that all of a sudden we're going to have this explosion of accessory units that are going to be a drain on services

and will destroy neighbourhoods. I think you talked about the decrease in the number of members per household. Is Ottawa like Scarborough in the fact that the population is declining and that these are the kinds of areas where basement apartments are found, so that the strain-on-services issue is moot?

Mr McIntyre: First of all, I can't answer the question fully because I don't know enough about Scarborough to discuss any comparatives. It's our sense that there is a lot of family-type housing that is being underused now. My mother comes from a family of 11 children. You don't see families like that any more. I never saw the house she grew up in, but I imagine it was quite large and I imagine it still stands somewhere in Stratford—maybe you're from Stratford—and I imagine that more than one family now lives there. I think that type of opportunity exists.

We have a lot of people looking for decent, affordable housing. Some of this will not be the answer for them.

Mr Owens: But it's an option.

Mr McIntyre: It's an option. A lot of home owners are not going to want to be landlords. That's a choice people make. But some people are going to see an option. Some people are going to rent it to their own kids I think, because of the need to have a little bit of space. There's a TV show where the kid lives up on the garage kind of thing. These things will happen on a small scale.

What's happened in Scarborough is demand-driven. Obviously, the supply of affordable housing has not kept up with the demand, so this unlawful market has existed. Now it will become lawful, except as I understand it, if the places are unsafe and unfit, they won't be legitimized.

Mr Owens: And that's a good thing.

Mr McIntyre: I think so.

Mr Cordiano: I'm a little reluctant to ask any questions, because at the end of your brief you say that this legislation is perfect, that there should be no further amendments, and just pass it.

Mr McIntyre: If you're trying to suggest that I'm saying it's perfect to end the problem of affordable housing, no. I'm saying that it's fine to create another choice and to legitimize some situations that exist now, so let's pass it.

Mr Cordiano: Do you believe that this legislation needs to be amended, to be improved?

Mr McIntyre: No. Let's get on with it.

Mr Cordiano: Okay. I have no questions.

Mr Daigeler: Thank you very much, Dan. I presume, at least that's the title of your presentation, that you're representing the Federation of Ottawa-Carleton Tenants Association and not where you live today.

Mr McIntyre: That's right.

Mr Daigeler: Perhaps I should just clarify for the members of the committee that the mayor of Ottawa is perhaps the mayor for you where you live but not for your association as such.

Mr McIntyre: I think the mayor would agree there's divided opinion on this.

Mr Daigeler: Based on your experience, which

includes Nepean, I think you put your finger on the most important problem. You said in response to a question that most likely there won't be much of a takeup on this bill. I think you probably are right. There are people out there who think that's the solution to the housing crisis, which I understand you're not arguing, but I think there are some people in the government who see this really as a major solution. I doubt very much that it's going to be, precisely because there are supposedly going to be regulations, which we haven't seen yet and we're still waiting for them, with regard to fire and safety which are probably going to make it quite difficult, at least I hope so, and expensive to make these existing illegal apartments legal.

Mr McIntyre: And it won't work.

Mr Daigeler: From your experience in the Ottawa-Carleton area, how many units would you say could be made or will be made legal if we have the regulations that the minister has promised?

Mr McIntyre: Are you asking how many current units are illegal that would be made legal or how many would happen?

Mr Daigeler: I'm thinking particularly of those that are illegal. Frankly, I'm on speculation, because I don't have any figures on it.

Mr McIntyre: So am I. No one publishes a figure that I'm aware of that says there are x number of illegal apartments in Ottawa. I think the ministry has taken some educated guesses, has done some surveys, and we understand that some exist. People don't call our tenant hotline and say, "I live in an illegal apartment," so we don't have a checklist that says, "We've had this many calls from people." We don't know that number. We suspect it exists because of just the way things tend to happen.

I was asked by people in the ministry when the ink was just drying on the drafting of this, as I was often asked for opinions when your party was in government. In about three or four years we'll be saying, "What was the fuss about?" I hope I'm wrong in a sense. I hope thousands of people will take this up, but I don't think it's going to happen, because I don't think home owners bought a home to become landlords.

I think there are going to be some people who are going to say, "Jeez, the taxes went up because of MVA," or, "I can't meet the mortgage," or, "I got laid off." "How can I make ends meet?" And someone's going to say, "Just make an apartment in your house." They'll say, "Jeez, I'd never want to do that," or "Oh, I could do that." Those are some of the people who can take this thing on. I don't know how many home owners are having difficulty with all the layoffs that are happening in different places, around Canada actually, but we're dealing with the province today. I hope there's more takeup than I suspect there will be, but I don't suspect there will be huge numbers of apartments in houses.

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Hon Ms Gigantes: Mr Chair, on a point of information: I understand that the draft fire regulations have been distributed to members of the committee in Toronto on Thursday. Is that right, Mr Clerk?

The Chair: I'm not aware of it.

Mr David Johnson: I certainly haven't received it. I checked with my office yesterday.

Mr Daigeler: Perhaps to the members of the government, not to the members of the committee.

The Chair: We can clarify this issue later. Thank you very much, Mr McIntyre. We always appreciate your presentation to the committee.

Mr McIntyre: We aren't going to be condoning a situation where tenants are living in firetraps, so we hope there will be some safety protections built in.

HOUSING HELP

The Chair: Next presentation is from Housing Help, Mr Wilson. Introduce yourself and your colleague for our Hansard recording, then begin. You have 30 minutes.

Mr Michael Wilson: Beside me is Lisa Jamieson, the housing educator at Housing Help, who works on public education and policy for us. I'm Michael Wilson, the executive director of the agency.

Housing Help is a small non-profit that's been in existence since 1989, when we saw about 10,000 clients. We saw upwards of 28,000 this last year. We see people who have housing problems, people looking for housing and trying to find a way to live in Ottawa-Carleton.

Housing Help would like to express its support for Bill 120. The residents' rights bill is a laudable piece of legislation that extends rights to previously unprotected groups, people living in self-contained apartments in houses and people living in supportive housing.

First I'd like to speak to you about the need for Bill 120 in the context of Ottawa-Carleton.

In Ottawa-Carleton, social housing waiting lists have reached unprecedented high levels and private market vacancies are the second lowest in the nation; usually, they're first. Housing Help assists low-income people in Ottawa-Carleton to find and sustain housing.

The housing struggles of the people we serve are becoming more and more severe. For people with support needs, Ottawa-Carleton's dismal rental conditions and insufficient supply of mobile, community-based support services often mean that they have little choice but to live in supportive care housing. Thus, in order to have a roof over their head, people in need of support often give up their basic rights, rights that other tenants have.

While Bill 120 will not eliminate the need for affordable housing nor the need for mobile community support services, it will protect people where they are currently living and at the same time will offer some potential to increase the supply of affordable private market housing. Clearly, Bill 120 does make sense.

The proposed amendments to the Planning Act and the Municipal Act that this bill addresses will have the same impact as Bill 90, the withdrawn apartments-in-houses legislation, which we also supported.

More than 100,000 tenant households in Ontario presently live in jeopardy. They risk homelessness because they occupy illegal apartments in houses, illegal because restrictive and exclusionary municipal zoning does not permit them.

We do not have a clear idea of how many apartments in houses exist in Ottawa-Carleton, but according to the municipal housing statements of Gloucester and Cumberland, in the eastern part of this region alone there were an estimated 1,000 apartments in houses. This eastern area represents just 21% of the region's population density and approximately 20% of the region's single-family housing, town houses and row housing stock.

With Bill 120's amendments to the Planning Act, tenants in apartments in houses will gain security of tenure and they will be able to enforce property standards and other bylaws and legislation without fear that the landlord will evict them. Yet Bill 120 is not a sweeping acceptance of apartments in houses. In order for these units to be permitted, they will have to comply with basic safety codes set by the building code and fire code.

Further requirements for apartments in houses will be specified in Bill 120 regulations, regulations which we strongly suggest and recommend are developed in consultation with tenant groups as well as technical agencies and departments. Tenant advocacy groups are committed to ensuring that Bill 120 will result in safe and secure housing for tenants in apartments in houses.

We must emphasize that the amendments to the Planning Act are also crucial to the 100,000 home owners who presently rent a unit in their home. Often this unit houses a family member or helps to pay the mortgage; in other words, it is a necessity. With the passage of Bill 120, neither tenants nor owners of apartments in houses will have to live in fear: fear that they will lose their home, fear that they will have to move away from or evict a family member or fear of losing a critical source of revenue. Bill 120 will permit an alternative type of rental housing development which is affordable, resource-efficient and desirable.

A clear majority of eastern Ontarians, 71% surveyed by Environics in 1992, indicated strong or some support for allowing home owners to add a self-contained apartment to their house. In fact when the city of Ottawa was operating the home planning advisory service, the majority of the 1,000 annual contacts were inquiries about creating apartments in houses. None the less, a vocal minority, including municipal government representatives, have opposed provincial legislation to permit apartments in houses.

Critics of the legislation indicate concern that the infrastructure will not be able to support double-density neighbourhoods.

Housing Help believes these concerns are grossly exaggerated. Household sizes have decreased considerably over the years, thereby actually reducing the strain on the infrastructure in older residential neighbourhoods. Furthermore, this legislation merely permits one apartment in single-family houses, semidetached houses and town houses. Obviously not every home owner will opt to create an apartment in their home.

Bill 120 also makes positive amendments to subsections 35(2) and 49(1) of the Planning Act. We are happy to see that the Planning Act will specifically direct municipalities that they cannot pass a bylaw that distin-

guishes between persons who are related and persons who are unrelated in respect to the occupancy or the use of a building. The addition of subsection 35(2) to the Planning Act will ensure that such discrimination will no longer exist in municipal zoning.

What still remains to be addressed are the more subtle forms of discriminatory zoning which restrict certain types of residential uses, ie, group homes, emergency shelters, rooming houses etc, from certain neighbourhoods. While we realize that Bill 120 does not look at this issue, we hope the provincial government will pursue this in the future.

The addition of subsection 49(1) of the Planning Act, dealing with the search warrants, could benefit all tenants, not just tenants in apartments in houses. Presently, if a tenant is unavailable or reluctant due to fear of the landlord's repercussions for their complaints, unable or unwilling to allow an inspector into their apartment, the municipality has to go to court to obtain a search warrant. City of Ottawa zoning and property standards inspectors have told us on many occasions how difficult this can be. Under the present system, bylaw enforcement officials must indicate what they intend to seize from a unit before obtaining this warrant.

The new amendment will allow inspectors to obtain search warrants in order to do inspections without having to demonstrate that they intend to seize anything. For example, Housing Help has had clients who were without heat in their apartment, and when the city of Ottawa property standards inspector went to investigate, he could not gain access to the boiler room. It was locked and the landlord would not cooperate. This is exactly the type of situation where the inspectors need to be able to obtain search warrants expediently without being required to demonstrate to the courts what they intend to seize. It's rather difficult to seize a boiler or a locked door.

1010

Clearly, the purpose for improving access to search warrants for bylaw enforcement officials must be for the intention of inspecting and ordering compliance with standards as opposed to inspecting an order to close the unit down. This is a strong issue for us.

In order to ensure that municipal bylaw enforcement across the province reflects this principle, we recommend that the province amend the Planning Act to encourage municipalities to repair and preserve the housing when an owner will not, and permit municipalities to do repairs and readily recover the cost from the property owner. The City of Ottawa has recently approached the province, the Ministry of Municipal Affairs, in order to have a bylaw passed to permit them to do exactly this.

Where the issue is zoning violations, the Planning Act should reflect a principle of preservation of the housing stock by clearly outlining steps for how zoning infractions could be remedied.

Bill 120 also proposes changes to the Planning Act and the Municipal Act which will facilitate the provision of garden suites as another form of affordable housing. Ottawa-Carleton participated in the provincial demonstration project on "granny flats," with four units being avail-

able in our area. Interest in the garden suites alternative was demonstrated by the sizeable waiting list for the four flats. The local success of the program prompted regional council to amend the regional official plan to specifically identify granny flats as an acceptable housing option.

Bill 120's amendments to the Planning Act and the Municipal Act will have the positive impact of securing the tenure of tenants in apartments in houses, ensuring the safety of the units and offering the potential of increased affordable housing alternatives in our community.

I'd like to address the amendments to the Landlord and Tenant Act, the Rent Control Act and the Rental Housing Protection Act.

The number of cases of abuses and garbage bag evictions experienced by residents in supportive housing highlighted during the Lightman commission hearings prompted Bill 120's amendments to the Landlord and Tenant Act and the Rent Control Act. Although we did not present a brief to the Lightman commission, we too can testify to local situations in supportive housing where tenants have been evicted abruptly and unfairly. In one case, a woman was told to leave her unit by the end of the day because staff found her behaviour abusive. The woman had been speaking to the housing staff in defence of another resident who our client felt was being unfairly evicted. In another situation, a woman who was temporarily hospitalized due to mental health problems was visited by the staff of the home, not in order to support her, as you might anticipate coming from supportive housing, but in order to have her sign an agreement to leave her apartment. Although she had done nothing wrong, apparently she was too depressed for the supportive housing provider to carry on with her in the residence. There are just two examples of situations where, had they had the same rights as other tenants, these women would not have lost their housing.

An estimated 47,000 people across Ontario live in unregulated care homes and therefore are at risk of abrupt eviction, lack of privacy and uncontrolled costs for care and accommodation. By bringing residents of supportive housing under the protection of the Landlord and Tenant Act, the Rent Control Act and the Rental Housing Protection Act, they will gain security of tenure, they will gain the dignity of knowing that they have the same rights as other tenants and they will have more control over their own housing.

Coverage under the Landlord and Tenant Act and the Rent Control Act will also be a means of clearly separating accommodation from support services, clarifying the types of support services being provided and thereby enabling residents to have more control in determining what support services they are receiving. This is a step forward, one way of practically applying the principle of separating the provision of supportive care from housing, a position expounded by community groups as well as three of the ministries of the government: Health, Community and Social Services, and Housing.

One major problem, however, with the proposed amendments to the Landlord and Tenant Act and the Rent Control Act is that the definition of "rent" does not include meals. Currently under the Rent Control Act, the

provision of food in boarding homes is considered to be a separate charge, but still part of the rent; therefore, meals are covered by the Rent Control Act, ie, increase and notification. However, for units with a care component, the proposed amendments specifically exclude meals as part of the definition of "rent." This has a couple of potential negative aspects or impacts.

Tenants presently living in boarding homes who are already covered under the Landlord and Tenant Act and Rent Control Act will be at risk if the owners decide to offer some minimal type of service in order to be classified as supportive housing. Tenants would no longer have the food component of their housing covered by the Rent Control Act, allowing landlords to increase the cost of meals whenever and however much they like.

Residents in supportive housing would have their accommodation costs controlled, but not their food costs. Residents would thereby be at risk of economic eviction if providers drastically increased food costs, an insidious measure that might be taken by providers who do not want to comply with the provisions of the Landlord and Tenant Act. Conversely, residents would also be at risk of losing necessary food services if the landlord decided to stop providing meals.

Of course, providers will also be at risk if the food is not covered in the rent definition. With the proposed definition of "rent," if a resident does not pay the food costs, the provider does not have any grounds for evicting that tenant under the Landlord and Tenant Act. Clearly, tenants and providers would be better protected if food costs were reflected as a separate charge in the definition of "rent" for units with a care component.

We recommend that the definition of "rent" in the Rent Control Act be changed so that meals are included in the definition of "rent" for units with a care component.

We admit that including supportive housing under the Landlord and Tenant Act and the Rent Control Act will in some cases be challenging to implement. Most problems are likely to occur in situations when residents share their room with another resident, if they do not get along with the other residents or if a resident goes into crisis. However, the problem lies with the design of the accommodation and the insufficient community support and crisis intervention services that will assist people where they are residing. Clearly these are systemic problems which need considerable governmental support in order to provide what is required. However, systemic problems and fears of how difficult it might be to implement this legislation are in no way justification for continuing to deny rights of people who are also tenants.

One thing that will help in cases where problems occur in supportive housing and living conditions of the same is a more efficient court process. In Ottawa, it takes nearly three months to get a court date for applications under the Landlord and Tenant Act. This backlog must be eliminated. Tenants taking landlords to court will benefit and landlords taking tenants to court will benefit from a court system which can run on an up-to-date basis. Housing Help recommends that the province provide the resources necessary to reduce the backlog in the landlord-tenant court.

The need for public education on Bill 120: Our final comments on Bill 120 deal with the necessity of ensuring that all the people affected by this legislation are fully informed of their rights and requirements under this law. It would be ludicrous to pass a residents' rights bill without ensuring that the people affected are able to find out about their rights.

Home owners with apartments in their homes must be familiar with the regulations that govern the physical requirements of their apartment. It is very unfortunate that the city of Ottawa could no longer afford to cost-share the home planning advisory service with the province, as it would have been a very appropriate agency for informing home owners about the provisions under this new bill, to assist home owners through the provincial process for converting their homes and to monitor how many owners are building apartments in houses. We recommend that the province increase its funding of the cost-shared home planning advisory service to 80% in order to better assist municipalities to operate this service.

Furthermore, it will be very important to ensure the owners of apartments in houses are informed of their rights and requirements under the Landlord and Tenant Act and the Rent Control Act. We recommend that upon passage of Bill 120, the local rent control offices, in conjunction with the local landlord associations, coordinate information sessions targeted at landlords of apartments in houses.

Likewise, operators of supportive housing will need to become familiar with the requirements of the bill as well. We recommend that the rent control office develop information material for supportive housing providers in consultation with supportive housing associations and coalitions. In addition, we recommend that the province consult with and provide resources to local groups such as the housing coalition in Ottawa-Carleton in order to provide training to supportive housing providers on their requirements under the bill.

Of greatest concern to us is ensuring that tenants affected by Bill 120 are very informed about this law. For tenants in apartments in houses, we recommend an extensive mass media promotion to ensure that their housing is now legal and to give them information on the resources to contact if they are having problems where they are living. Furthermore, we recommend that the province require municipalities to provide information on houses that are being converted to include an apartment, and that the rent control office then be required to send a letter and information material to the occupant of the apartment as well as to the landlord.

For people living in supportive housing, the strategy of informing them about their new rights must be sensitive to their particular needs, which could include developing materials in different languages, including Braille, using simple language and using video media.

Finally, we recommend that the ministry consult with tenant and special-needs advocacy groups to develop appropriate information materials for people living in supportive housing. Furthermore, we recommend that funds be made available to tenant and special-needs

advocacy groups to go into supportive housing and provide information to tenants about this bill and about their rights.

We thank you for this opportunity to present to you this morning. We look forward to your questions.

1020

Mr Winninger: Your detailed recommendations are certainly very helpful. I believe that some of your concerns may already have been met—for example, even though you still require reasonable grounds to get a warrant for inspection, the requirement procedure has been relaxed, that the minimum area requirements for apartments other than bachelors at 344 square feet seems reasonable and the provision of natural lighting the same as you get in renovations. Finally, if you're a third-floor accessory apartment and you don't have an interconnected smoke detector system, then you'd be required, as I understand it, absent additional standards, to have a separate means of exit. So I think some of your concerns are already being met, but certainly the other concerns you express need to be considered as well.

Mr Owens: My question is with respect to abbreviated eviction proceedings. This issue has come up in a number of presentations. I'm a little bit nervous about codifying abbreviated evictions. Can you provide the committee with your views and some advice on that?

Ms Lisa Jamieson: I don't think we would recommend at all for an abbreviated eviction process. The process needs to be the same for everybody. Part of our concern, though, is that there are some delays in landlord-tenant court and that affects both tenants who are trying to take their landlords to court as well as landlords who are trying to take their tenants to court. It's more an issue of just resources to the existing system to make the process run more quickly, not to change the law at all in terms of landlord-tenant and the time lines, but just how quickly can you get a court date.

Hon Ms Gigantes: I'd like to ask specifically about your recommendations around the inclusion of food costs in the rent control component. I think one of the things that went on in the minds of people in considering how the legislation should be drafted was the understanding that in some care situations people may opt in and out of care and they may opt in and out of food services, which is a somewhat different situation from the normal rent control situation, where services are fairly stable. So that was one concern and I'm wondering about whether you've thought about that.

The second item, which has to do with the temptation for boarding homes to convert if there is no inclusion of food costs within the care home section, it seems to me that that might be inhibited by the fact that the legislation suggests there could be no eviction for non-payment of food or care services. That would not be very attractive to a boarding home operator.

Ms Jamieson: I think you're right, that is a possibility to counter the other, but I think that there are potential problems for all the different parties in this, in that if it were looked at more thoroughly and looked at covering the cost of meals in the Rent Control Act, obviously what

you're saying is that ability to opt in and out, maybe needs to be studied a bit more thoroughly as to how that could be implemented in that kind of procedure, but I think that everybody is potentially at risk the way it is now.

Mr Cordiano: Obviously you don't think this legislation is perfect, then, and needs further amendments, so I'm going to ask a couple of questions just where the minister left off around meals not covered under the Rent Control Act. My concern is that if you bring those in under the auspices of the Rent Control Act, you set a limit or a ceiling, if you will, for costs and ultimately you're going to set a floor for the quality of those meals. I think once you do that, that's going to be the standard by which operators will provide food. If there isn't a realistic reflection of what costs are, which will be determined arbitrarily by bureaucrats, essentially, you could have a deterioration of quality of services provided and that goes as well for provision of care, which might be brought under rent control as well.

By the way, I think by and large if you look at most rest and retirement homes and homes for the aged, there is a 25% vacancy rate right across the province, which is quite substantial, which means there is a regulatory effect in place now keeping prices and costs pretty low.

Mr Michael Wilson: In response, our recommendation comes from a desire to see this bill function within a consistency with other legislation. So because boarding homes are included under the Rent Control Act at present, providing food with accommodation, we thought this was an important part to look at. Indeed, there may be a lot of variables and I think that the implementation of regulations will have a very clear effect on this. I don't know that it's just an arbitrary decision by a bureaucrat.

I take your warning seriously. The whole question of profit gain is there and at the moment we still see landlords who collect their rent and feel they don't need to do any repairs because they need a profit margin and they don't do that. But at the same time, we're searching for consistency with existing legislation so that there is not a contradiction and not a loophole so that someone could jump out of their present situation and then find a way to raise rents without applying it to the housing but applying it to the food costs. So we ask the government to search this legislation to make sure that it's consistent and also that the food variable be considered.

Mr Cordiano: I can appreciate where you're coming from. I just have a great deal of concern with implementation and how that affects tenants. At the end of the day, I think when you speak of consistency, quite frankly, with the Rent Control Act, there is no experience in these areas for those officials to monitor and regulate meals and to monitor and regulate provision of care. There is no track record there in that ministry, first off, if you do believe that they should be regulating and monitoring these prices.

The Chair: Are you hoping for a response, Mr Cordiano?

Mr Cordiano: Yes I am, of some kind.

Mr Michael Wilson: I believe I've given a response.

Mr Cordiano: Yes, pretty well. I just make the point to reiterate that there isn't that kind of practical experience or history of the ministry being able to determine that area of concern and to say that they do have expertise in that monitoring. Anyway, I'll pass to Margaret.

Mrs Marland: I'm wondering if you could leave us a copy of the comments that you read from, because what was pre-circulated isn't what you read.

Mr Michael Wilson: No, what we circulated was a copy of the recommendations I presented. The full documentation will follow.

Mrs Marland: You will leave a copy of that brief.

Mr Michael Wilson: Yes, we'll mail it in to you.

Mrs Marland: You're the executive director of Housing Help. That's a paid or a voluntary position?

Mr Michael Wilson: It's a paid position.

Mrs Marland: You referred to some of the advantages of Bill 120 and you made a reference to the fact that no longer can municipalities pass bylaws excluding or controlling the number of unrelated people in a building. Is it your impression that that's the case now?

Mr Michael Wilson: Not locally, but there is evidence that this does happen across the province. It is a large question within planning decisions in municipalities that zoning not be done by people but by use of property.

Mrs Marland: I think you should know in your position that this is not a possibility in this province. The precedent for trying to control the number of unrelated people living in a unit was taken to the Supreme Court of Canada about 15 years ago by Barbara Greene, an example of a rooming house in North York, so municipalities cannot pass bylaws controlling the number of related or unrelated people in a unit, because the precedent stands for that challenge having been upheld, so it's not a legal possibility for municipalities in Ontario today.

I wondered if you could tell us what Bill 120 is going to do to improve the care of residents.

1030

Mr Michael Wilson: You mean in care facilities.

Mrs Marland: In retirement and rest homes, those areas that are controlled by Bill 120.

Mr Michael Wilson: We are supportive and we agree with the bill's position that tenure is a basic, given right. People pay a certain proportion of money for the housing they live in and the question of qualitative care or sufficient care or how someone is treated is a very separate issue from whether someone is entitled to have some sense of security where they live. Looking at this bill, what we see is a consistency across the board that people pay for a place to live. At that point, it becomes their home. It is no longer the property, in the sense of the owner of the property being able to dictate to them unfairly whether they will stay there or whether they will leave. This bill does address that.

Mrs Marland: At that point it becomes their home?

Mr Michael Wilson: That's what I said, yes.

The Chair: Thank you for appearing this morning.

AIDS HOUSING GROUP OF OTTAWA

The Chair: The next presentation is the AIDS Housing Group of Ottawa, Mr Terry Milne. Good morning, Mr Milne. We have allocated one half-hour for your presentation. You've been here for a few minutes; I think you know how it works.

Mr Terry Milne: I had initially been told 15 minutes; I may get you ahead of schedule here somewhat.

My name is Terry Milne. I'm the executive director of the AIDS Housing Group of Ottawa. The AIDS Housing Group of Ottawa is a non-profit agency that provides supportive housing to persons living with HIV and AIDS. We operate two programs: the first, Bruce House, a five-person group residence. It provides 24-hour support for those making a transition to community living and for those who require a higher level of support and care. The second of our programs provides rent-geared-to-income apartments to 26 people living with HIV and AIDS and their partners and a lower degree of case management support.

The AIDS Housing Group of Ottawa is also a community organization advocating for the needs of persons living with HIV and AIDS, but we are more than advocates. Our board of directors includes program clients and people living with HIV and AIDS, and those living with HIV and AIDS also represent a significant portion of our staff.

It is a community-based organization responsive to the population we serve. We support the principle of Bill 120. For the most part, we believe it captures the very worthwhile work done by Dr Ernie Lightman. It's important, we believe, that all citizens of this province enjoy equal tenancy rights, yet we do have some concerns and questions and I would like to briefly outline these.

First, regarding the amendments to the Landlord and Tenant Act: We recognize and support the end of tenancy rights for some and no tenancy rights for others. We do not want to support the view that the potential difficulties of special-needs housing requires limited rights for some of those who access it. What is required is adequate supportive housing, housing that meets the range of support needs of people living with HIV and AIDS. To provide a full slate of tenancy rights without the resources to operationalize those rights puts increased pressure on already overburdened agencies and does little to advance the rights of consumers.

Failure to back up these rights with adequate resources would likely have two results. The first is that housing providers will continue to be blamed for intolerance and inflexibility, even when this is not accurate. Second, hard-to-house individuals may be put in an even more vulnerable position if housing providers become less willing or less able to work with people with especially difficult needs.

Clearly, then, the need is to extend tenancy rights to all residents of this province and at the same time commit to providing adequate supportive housing for all those who need it. One in the absence of the other might become an empty gesture.

Regarding the Rent Control Act, we understand and

support the principle of separating housing and support services so that housing is no longer contingent on the maintenance of support services. This would allow individuals to determine the level and type of service they wish to receive and this will go far towards empowering people who are in a very vulnerable position.

Like others in the community, however, we are left to wonder how this part of the legislation might be implemented. We wonder if it is the intention of the government to dismantle the domiciliary hostel program. Under this program, through which Bruce House is funded, we are required to provide 24-hour support, meals, medication supervision and a range of other supports.

If residents choose to access only some of these services, what will the implication be for the payment of per diems? We, like others, currently operate at a deficit, and the loss of this funding stream would impact our ability to deliver what we are told by our district health council is a necessary, although already inadequate, program.

Clearly, the implementation of changes to the Rent Control Act will require careful thought and extensive consultation with the community. It would be difficult to justify endangering supports that are already woefully inadequate.

Finally, we have concerns regarding the process of implementation and the availability of information available through this process. Supportive housing providers need information regarding these changes.

I can tell you from my contacts in the AIDS community that there is little or no awareness of this legislation and its impact. We have, until yesterday, had no contact with the ministry and indeed have been unable to obtain background information on this legislation from the ministry.

The ministry will also need to provide information to communities regarding rights and responsibilities under the legislation. Individuals need to know what their rights and obligations are and where they can obtain assistance.

Finally, the ministry should work in a more collaborative way with housing providers. Many of these are small, community-based agencies meeting urgent needs with often inadequate resources. They will need the help of government in extending these rights in a meaningful way to their client population.

I want to thank the legislative committee for hearing these comments. I want to reiterate as well our support for the legislation. It is our hope that we can work with the government to extend these rights to the people we serve in a meaningful way. I welcome any questions you might have.

Mr Cordiano: I'd like to thank you for your presentation. Obviously, I'm concerned. As the Housing critic for our party, I'm deeply concerned about the question of separation of housing from support services and how that affects individuals and affects the ability of organizations such as yours to maintain funding levels to maintain the kind of provision of care that is necessary for tenants in a supportive living arrangement. I don't see that this legislation properly addresses that concern. You've

expressed concern around that. Do you believe support services should be included in the Rent Control Act as something that should be monitored and regulated, with a view to regulating prices for those services, or do you think we should leave those out of the Rent Control Act?

Mr Milne: No, I think the legislation clearly made a worthwhile contribution. The entire tenor of Dr Lightman's report was that those two things should be separated. We support that. What we are concerned with—and this is a question; this isn't a hard-and-fast answer—is that in doing that, in doing something that's very much needed, that we not put in jeopardy those programs already operating at the margin, that we not put in jeopardy their ability to deliver services. I don't think that's an insurmountable obstacle.

Mr Cordiano: You may have situations, and I've heard other groups that have come before us that have talked about this—it's hypothetical, of course; it hasn't happened—where you may not get payment for support services. Obviously, the housing portion of payments will be up to date, but the support services payment may be held back by a tenant. If we do bring those under the Rent Control Act, the Landlord and Tenant Act then would apply. Leaving them out leaves you with no recourse through the Landlord and Tenant Act.

Mr Milne: In our case, and correct me if I'm wrong, but I believe most people in this situation receive public funding under the dom hostel program. I think clearly in the regulations, and I just want to say this again, there has to be some provision made for those organizations which live and die by that funding.

Why that cannot be done and also have supports in housing separated escapes me. To me, the two are doable if this is well thought out and done in consultation with the community. One doesn't necessarily suppose the other.

1040

Mr Cordiano: That brings me to another question. You mentioned the fact that there was no contact made with you by the ministry, there was no effort to consult with your group prior to the drafting of this legislation?

Mr Milne: No, and this was written in some frustration, not with a ministry as such but as a community. I have to tell you, most of my experience is in mental health and some of the issues around mental health. I've been involved with this community now for about a year, primarily as a board member with our organization. We tend to be the poor cousins in the housing business.

I phoned around this week and talked to most of the AIDS housing providers in Ontario. Very few of them had any awareness of this legislation beyond the fact that indeed it was here and some response had to be made.

I would encourage the government to make some effort to make contact with this community, tell them what the impact of this legislation is going to be on them and work with them, because virtually all of them are in the situation we're in where they operate on a shoestring. They're just making it now. They're terrified when they first see this legislation. Once I read this through, I was fairly comfortable with what it's doing, as long as it

works in our favour in the regulations, but I think some consultation and some collaboration is in order.

Mr Cordiano: I just find it unacceptable that the ministry would not have consulted. In fact, I know that Dr Lightman obviously made an effort to talk to a variety of groups. Perhaps the AIDS groups around the province were not included in that process.

Mr Milne: I don't know if they were when Dr Lightman did his work. I was part of the mental health community when Dr Lightman did his work and I can assure you he consulted us fairly completely.

Mr Cordiano: I don't recall that there was anything in particular, but that's something we may discuss at a later time.

Mr Milne: My concern isn't that this has happened; it's that from here on in a more collaborative stance be taken by the government and that we be included a bit more, just to be brought along. We're in a somewhat different position than maybe most dom hostel operators.

Mr Cordiano: I think it's rather unique. Just to move on to the question of accessory apartments in houses, do you support that portion of the bill, the portion of the bill dealing with accessory apartments in houses, basement apartments and similar accessory apartments?

Mr Milne: That's something we really haven't looked at because it really has very little impact on what we do.

Mr David Johnson: Most of my questions have been touched on in that in the previous questioning the lack of consultation was certainly one point that I wanted to follow up on. You're representing the AIDS Housing Group of Ottawa. Have you been in contact with your colleagues in other cities, and is this a similar situation in terms of the lack of consultation, not only here in Ottawa but in Toronto or Hamilton or London?

Mr Milne: I can't speak for them. Most of them have little awareness of what the legislation is about.

Mr David Johnson: The information we've had from government sources is that in fact the consultation process has been very extensive, that literally hundreds of groups have been involved, and that this is quite a groundswell of consensus in terms of what's coming before us. So I find it interesting—I don't dispute what you're saying, because we've had municipalities saying exactly the same thing.

Mr Milne: This can be taken too far. My colleagues in mental health are, to a person, here today. Most of the people that I work with in various policy areas in the community have all been aware of this. I really feel quite strongly this is an opportunity for the provincial government, both the government itself and the bureaucracy, to recognize that this segment of the housing community exists. We're a fairly small player and I guess I'm asking more for recognition than anything.

Mr David Johnson: I'd like to understand a little bit better your point with regard to the separation of housing and support services. Your needs are very particular, I guess perhaps unique. There has been a lot of concern expressed that the housing component be separate from the care component and, to the contrary, we heard this morning that they should be rolled together and they both

should be controlled. I don't quite understand where you're coming from in this regard. It sounds to me as if you're saying that they should both be controlled but in different fashions.

Mr Milne: I didn't speak to the idea of control. My primary concern is that the people we deal with are quite vulnerable, and they're also often facing issues that make provision of service to them quite difficult. Where you bundle up service and housing, you make them more vulnerable than they have to be.

Let me give an example. We deal with a range of people for whom substance abuse problems are an issue, but they are also people who are facing the dilemma of being diagnosed with HIV and facing the onslaught of AIDS. How unfair is it to make their housing contingent on their ability to adhere to a plan of treatment imposed by some care giver? It's not fair; it's not just.

Housing is a right we all have. When I pay my rent this month, I'm going to get to live where I live, regardless of whether I obey my doctor's orders or not. Why should they have to live any differently?

Yes, both supports and tenancy and rent should be regulated to some extent. Should they be regulated under the same act? I guess I'm taking it from a service provider's point of view. Should people's right to have a residence be contingent on their adherence to a plan of treatment? That's clearly ludicrous. You or I would refuse to live that way.

Mrs Marland: I think you're bringing some very important viewpoints to this committee. I would like to ask the minister, since she is here this morning, whether you would make a commitment to Mr Milne that your staff will listen to the input of not only the AIDS Housing Group of Ottawa but this very specialized group of care providers in the province. I'm sure you're concerned to hear that your staff have not responded to their questions and that your staff haven't been involved in talking to such a significant representative in this province in the drafting of this bill. Would you be willing to make that commitment this morning?

Hon Ms Gigantes: I'm delighted that Mr Milne's here and reminding us that we have to make more efforts to reach out and involve groups who are active on housing issues, groups such as the one you're working with, Mr Milne, and I certainly am quite prepared to encourage the support of the Ministry of Housing staff to make sure that if our consultation and discussion process has not up to now been adequate from your point of view, we remedy that. I'm delighted to say that.

Mrs Marland: Thank you for that commitment. Being part of a category of our Ontario residents who would certainly be among those Dr Lightman was identifying as vulnerable, it's really quite disappointing this morning to hear you haven't been involved thus far.

Mr Milne: If you took all the AIDS housing providers, other than Casey House, which is a different kettle of fish, and lumped them together, I don't think the entire budget would come to \$2 million. We are very small players. Believe me, we get overlooked in far more disturbing ways than this in the course of any week.

What I'm asking for is that we begin from this point on to work together. I've identified a problem. I don't want to sound partisan here, but this government has taken Dr Lightman's work and operationalized it in a way that we as service providers can live with and that we as advocates can live with, and that's a very delicate piece of work. We would certainly be disappointed if, having identified our needs to the government, we weren't to be consulted from this point on.

I think one of the more minor points I raised was the difficulty getting information, and my concern in raising that was that from here on in we work collaboratively, not that I'm trying to raise a huge concern that to this point we were missed. We're easy enough to miss.

1050

The Acting Chair (Mr Bernard Grandmaître): One short question.

Mrs Marland: There is a huge concern on my part that no matter how small you are, you haven't been able to get information you've needed, and I think as of this morning we now have that remedied.

Having said that, what I would like to ask you is, do you think that part of the difficulty of this bill perhaps could be that where we're dealing with retirement and rest homes, in that part of the bill, perhaps some of those aspects, especially any part of control that governs care, really are not a responsibility, in fairness, of this minister but rather of the Minister of Health? Do you think the overlap between the two ministries is a bit of a problem inasmuch as in this bill it only comes under the Minister of Housing and it doesn't do anything about the care concerns Dr Lightman also identified?

Mr Milne: Correct me if I'm wrong. I'm not a lawyer, but my understanding of this legislation is that the provision of care that has fallen—and again, I'm taking the community perspective, not the government perspective. We are divesting the provision of housing of its care component. We're not bringing something into housing that doesn't belong there; much the opposite, from my point of view, we're taking something out of housing that never did belong there and making it a separate issue. Now, where that is subsequently regulated I don't know. Maybe that's an open question we can talk about now or at a later date.

I have to tell you, I'm on the outside looking in to the government process, and I'm saying the problem was that we had all this lumped together. The problem, albeit probably not to everyone's liking 100%, has now been addressed by pulling these things apart, as Dr Lightman recommended. Clearly, that was the whole tenor of his report. Now we have some of the details to work out, but that has been done, has it not?

Mr Owens: Mr Milne, I want to thank you for your presentation. I think it's fair to say that as part of the group that could be viewed as hard to house, even as a subset, men and women who are HIV-positive and persons living with AIDS form a separate subset and still face discrimination on a number of levels with respect to their housing needs. I'm pleased that you're here this morning and further pleased that the minister has made

comments with wanting to work with yourself and other providers, again with respect to your group.

I think—and this is a personal view as a person who was a volunteer with the AIDS Committee of Toronto back in 1988, which was long before Hollywood had discovered AIDS as an entertainment vehicle—in looking at the housing needs, this bill does a couple of things.

One, it is going to give safety standards and a level of comfortable housing to a group of individuals who, once a diagnosis is rendered, their life simply implodes or explodes, however you want to characterize it.

Secondly, in terms of the care issue, our government, through the Ministry of Health, has worked on the long-term care legislation. This minister and the ministry, with respect to operating agreements with co-op housing and non-profit housing, have addressed, again, specifically the hard-to-house groups. So in terms of the supportive housing issue you addressed, it's not being left out and this piece of legislation superseding and not addressing those needs.

I guess I don't particularly have a question, other than to say I appreciate your comments here this morning, and certainly if there's anything else that we as this committee can do in terms of addressing your issues, please feel free to forward information to us.

The Chair: The question is, don't you agree?

Thank you very much for coming this morning and making this presentation. For your information, the committee will be considering this bill clause-by-clause during the week of March 6.

I have some housekeeping matters. The first one would be of interest to members. The checkout time at the hotel is 1 o'clock. There are two rooms available to the committee to leave their belongings in if they wish.

Mr Owens: My room has been nationalized by the Liberals.

Mrs Marland: Is that the party room?

Mr Winninger: You better get the skeletons out of your closet.

The Chair: Another piece of information I might impart to you at this point is that we have a change to the schedule regarding tomorrow in that at 4:30 the mayor of North York, Mr Lastman, will be appearing before the committee. You might want to make a note of that.

Mrs Marland: I have a scheduling question for tomorrow as well. I don't know whether that's appropriate to do with the subcommittee when we finish this morning's depositions or just to mention it now.

The Chair: Let's do it now.

Mrs Marland: I guess it's governed by the fact I've been told that two spaces have come up for tomorrow. Is that the case, Mr Clerk?

Clerk of the Committee (Mr Franco Carrozza): I have no idea.

Mrs Marland: No. Okay. There is a group in Toronto that I think it's very important the committee hear from. It's the Massey Centre for Women; it's a women's transitional housing. I think everybody on the committee would like to hear from the representatives of the Massey

Centre. If there was a cancellation when we're in Toronto—I'd heard there was one tomorrow; that there were two actually and one was going to be taken by the mayor of North York. I'm simply asking the subcommittee to consider the Massey Centre for Women.

The Chair: Once we know whether there's actually vacancies, we can talk in subcommittee about that.

The other matter I wanted to bring before members—and this has been raised today. We received a package from the ministry last Thursday and the last paragraph said the office of the fire marshal will be sending additional information on the draft fire code amendments and powers of entry under the Fire Marshals Act. Today we have that from the ministry and the clerk will distribute that to all members.

WEST END LEGAL SERVICES OF OTTAWA

The Chair: The next presentation will come from West End Legal Services. Please introduce yourself and your position within the organization.

Ms Mary Garrett: My name is Mary Garrett. I'm a community legal worker at West End Legal Services. For those of you who don't know me, I should advise you that I have a reputation of talking in stories and you'll find that as we go through this.

West End Legal Services is a community legal clinic funded by the Ontario legal aid plan. We opened our doors in the west end of Ottawa-Carleton in February 1982. We are a general poverty clinic and, like the rest of the general clinics in our system, more than 50% of our case load is in the area of housing. In 1993, we gave legal advice on 1,796 legal questions on housing-related matters while opening 250 files to represent tenants in matters of eviction, repairs and rent-related issues.

We have seen a lot of abuse in the 12 years that we've been fighting for tenants' rights: abuse of tenants, abuse of process, and abuse of the circumstances. The abusers, more times than not, have been the landlords. However, we recognize that the system, other agencies and, to be fair, on the odd occasion, the tenants are also abusers.

1100

Based on our wealth of experience we wish to inform you that we support Bill 120. We see the need for more safe, affordable accommodation any way we can get it. We need to legitimize apartments that already exist so that tenants can enforce their rights under the municipal property standards bylaws or the legislation such as the Landlord and Tenant Act and the Rent Control Act.

We need protection for tenants from those landlords who find the loopholes and manipulate the law to benefit themselves no matter what.

We believe that Bill 120 achieves this to some extent because it will correct some of the injustices that we have encountered over the years and which are depicted in the following cases.

It has been our experience that some people will bend and manipulate the game if they do not like the rules they are given to play with. In one case a tenant, on the advice of a rent review officer, made a complaint against the landlord because of an overpayment in rent. It was during the time of the Residential Tenancies Act.

As part of bad negotiations and intimidation by the landlord, the tenant agreed to vacate his unit and pay an illegal rent increase. This is when the clinic got involved. We challenged the increase and the agreement. The tenant eventually got back a settlement in the amount of \$10,000 of illegal rents that he had paid for a period of four to five years.

When the tenant left—and that was before we got involved—the landlord knew he did not want to be involved with rent review again. How did he accomplish this? He rented the house to a man on old age security and his daughter who was receiving family benefits as a single-parent mother, and then had them sign a commercial lease.

The landlord is a prime example of why we need Bill 120, for people like him who would use the possibility of services as a way of exempting him from the Landlord and Tenant Act or the Rent Control Act.

In another case, a man called me and stated he was receiving a pension of \$1,060 per month. His rent was \$1,100 per month. How does he do this? He shares his home and a lease with two other unrelated people. This is not uncommon any more. The rest of his story is not uncommon either. One of the people who shared the lease skipped out and the third is threatening to leave because he cannot afford to pay half the rent. When we asked why he chose these accommodations, the man said he had no place else to go.

The hardest part of our job is telling someone they have to move because they can't afford the rent and there is no place we can suggest as an alternative because we know the waiting list for subsidized units is too long and there is nothing out there to encourage private landlords to provide low-cost residential units.

With the changes to the Planning Act and the Municipal Act proposed by Bill 120, some of this need can be accommodated. Home owners could share portions of their homes as apartments. This would provide shelter to tenants while assisting the home owner in paying the mortgage.

While some home owners will not want to participate in this opportunity, others will. In fact, these apartments exist now in communities even where home owners cannot put apartments in their homes due to zoning restrictions. They provide an income to the home owner and while the tenant may get a roof over his head, he gets little or no protection under the Landlord and Tenant Act, the Rent Control Act or municipal bylaws, due to their illegal status.

On the point at hand, our clinic represented a young student who rented a basement apartment with a couple of other persons. Each tenant had a separate agreement with the landlord. Each tenant paid about \$320 a month in rent. None of the tenants knew each other before they moved into the unit. The bedrooms they lived in did not comply with the minimum property standards. Two of the three bedrooms did not have windows. In fact, there was only one small basement window in the apartment. The apartment was cold and damp and in need of repairs. Our client threatened to call property standards if the landlord did not make the needed repairs, excluding of course the

structural changes the tenant did not know were in violation of the building code. The landlord's response was simple: "Get out."

How can we ask a judge to stop an eviction when the apartment is not legal from the standpoint that it was not zoned properly, that there were no building permits to allow its existence, that it does not comply with the building code and property standards bylaws and it does not comply with the fire code? How are we to force property standards to issue an order against a unit that is not supposed to be there? Where are the tenants to go on such short notice? Where are the tenants to go to find other legal accommodation as cheap as the illegal unit they are forced to leave? We can make an assumption that the people who can afford decent, adequate legal apartments are not going to rent insufficient, unsafe illegal apartments for the cost savings it provides or for the adventure they may get from it.

A landlord who would put three young men into an apartment which is too small, too damp, too run-down, a fire trap and charge them \$1,000 for that privilege will not be the kind of person who will encourage the tenants to enforce their rights under the law. If there is a loophole at all, the landlord will find it. In this instance, the loophole is that this apartment is not legal and accordingly he must move everyone out. Is there anyone who believes this apartment is not going to be re-rented? Is there anyone who believes this apartment is going to be fixed up so that it meets all the safety codes and conforms with existing bylaws? Unless there is legislation in place that will force the landlord to comply, nothing will change.

With the passage of Bill 120 and a set of regulated standards for apartments in houses, this landlord will then be in a position to apply for a building permit and make the changes required to make the apartment safe and legal. The tenant will be in a position to apply to property standards for an order having the bylaw adhered to. The legal clinics will be able to apply to the courts for the enforcement of the tenant's legal rights.

Now on search warrants: At the present time, the only way a city employee can gain access to areas they are not invited into is to get a search warrant. To do so, they must show reasonable and probable grounds as well as the need to seize evidence. With the proposed amendments to the Planning Act, municipal employees such as property standards bylaw inspectors will be able to obtain a search warrant without the express requirements to seize evidence. Most tenants who require municipal employees to enter their premises do not wish or need evidence seized. They need an inspection to see where the problem is.

Our office received a call one Saturday morning in November a few years ago from a man who was two weeks late in paying his rent. When he awoke, he found that he had no electricity in his apartment. His unit was electrically heated. As well, his fish had died and his food was spoiling in the refrigerator. His landlord was not cooperative, stating that he was going to do nothing unless the rent was paid up and, I might tell you, paid up now. In this case, we were fortunate that this happened

on a weekend when property standards officers were not working because we were able to get the police to go into that apartment building. The police were able to encourage the landlord to get them into the utility room where they found that the landlord had cut the power off to the tenant's unit because the rent had not been paid. They also found the landlord had cut power to 20 other units as well for the same reason. Had this happened on a Monday or had the police decided not to get involved because this is a civil matter, the city inspector may not have been able to get into the utility room, because he would not have been able to get a search warrant.

1110

In another case, our client lived in a ground-floor apartment of a house which had been converted into three apartments. The furnace was in the basement and access to it was through the basement apartment. Our client was having problems with the landlord because of her calls to the property standards department. The tenant who occupied the basement apartment was a friend of the landlord, who lived out of town, and therefore was not as cooperative with our client as he could have been.

The tenant in the basement apartment went away for four or five days in the middle of winter, closing the furnace vents to our client's apartment before he left. Our client called property standards, but no one could gain access to the basement furnace room while the tenant occupying the basement was away.

Education: Not all landlords we deal with are like the ones we described in the previous cases. There is a great number of landlords who create problems simply because they do not know what they are doing. They have never bothered to find out the rules that they must follow. They all understand that to sell insurance or real estate, a person must be licensed to ensure that they know what they are doing. The same goes for those practising medicine or law. As well, you must be licensed to run a business, be it a department store or selling goods from your car.

However, the same people who believe these things believe that all you need to be a landlord is an apartment or a house to rent. They do not stop to think about the laws or the rules. Many of the small landlords we see operate under this premise: "The tenant lives in my house and pays me rent, but it's my house, so I can come in any time I want to. I do not have to fix it unless I want to. I can decide how high or how low the heat is turned on and who can visit this house." These are landlords, mind you, who are renting apartments in houses. These are not rooming house owners.

It is not enough to change the rules by passing Bill 120. We submit that government must also educate those affected about the changes and how each is affected by the changes. Since these changes will produce more small landlords, it will be a good opportunity for the government to produce a booklet on the obligations of the landlord. It should explain the laws that they must adhere to, such as the Landlord and Tenant Act, the Rent Control Act, the Human Rights Code and the Income Tax Act etc. It should also point out the tenant's rights so that the landlord will know not to infringe on them. It should

carry a warning to those persons who cannot abide by the restrictions imposed by legislation that they should not become landlords.

We thank your committee for the opportunity to meet with you. We trust that when you go back to Toronto to your deliberations, you will remember the people our office represents. The persons who are on their own have no power to protect their homes. They need to rely on laws that will keep them safe. They need to rely on others to make a place available for them to live. They need to rely on a system that will work and give them rights, even if they have insufficient money. Bill 120 will not do all of this, but it will help to achieve some of it.

The Chair: Thank you. We have about four minutes.

Mrs Marland: I'm glad you've identified a problem of absentee landlords, because that is an amendment we will be bringing to this act, that if basement apartments are to be legalized under Bill 120, at least they are owner-occupied. You've identified the problem when the owner isn't in the same building. Are you a lawyer?

Ms Garrett: I'm a legal worker.

Mrs Marland: You're talking about the fact that under Bill 120, the remedy will simply be for the tenant to get their unit inspected and then the landlord will be in a position to apply for a building permit and make the changes required to make the apartment safe and legal. Is it your understanding that Bill 120 will have the power to force the owner of the basement apartment to bring it up to standards, or will the owner have a choice of getting out of the basement apartment business and not having to spend any money?

Ms Garrett: Landlords always have a choice on whether or not they want to remain landlords or whether or not they want to retire that business. Bill 120 does not change that. What it does is it gives the tenant an opportunity to say, "If you're going to be in the business, if you're going to collect my money, you're going to have to provide me with a safe, secure place to live, and if you don't, there will be availability for other people to provide that service."

Mrs Marland: So it is your understanding that Bill 120 doesn't guarantee safe tenancy to basement apartment tenants, because there's no mandate to require the landlord to spend the money that might be necessary to make that unit safe. In other words, the tenant may lose their accommodation.

Ms Garrett: But it still provides more protection than there is now, because there are landlords out there who can simply say to a tenant: "Basement apartments aren't legal. You have no legal rights." If the tenants know that this bill has been passed, they can then at least examine and investigate, and they don't have to stop searching for their rights simply because they've been intimidated.

It also allows for landlords who got into this business without checking what their rights are—because they knew they had no rights. They knew they weren't allowed to have an apartment, so they went ahead and they did things, they built an apartment that didn't conform.

Mrs Marland: My concern is that we have unsafe

basement apartments. My other concern is that we will have tenants losing "this alternative for affordable housing." Frankly, I don't think basement apartments are my vision for affordable housing in Ontario in the first place. I know they're not. But my concern is that it's not quite as simple for the tenant as it sounds, because it sounds on the surface as if the tenant just has to phone the municipality and say, "Come and inspect this unit where I live." While they are at risk in living in an unsafe unit, they also risk being evicted because the owner may not have the money to upgrade the apartment to meet the new standards.

Ms Garrett: I understand that there are going to be, if not already, some recommendations by other groups in Toronto who are going to suggest that money be available for landlords who want to upgrade for apartments. I'm not here to speak about everything.

Mrs Marland: Where would the money come from?

Ms Garrett: You'll have to ask that group when they come before you.

The Chair: I have Mr Owens, Ms Gigantes, Mr Winninger and Mr Fletcher, all in four minutes.

Mr Owens: I've had enough air time today, so I yield my time to Mr Fletcher.

Hon Ms Gigantes: Ms Garrett, if I could ask you about the question of education, because I think that what you raise is an important question there; I believe, as you have stated, that there are landlords, particularly landlords of one unit within a house, who are not aware of their responsibilities and their rights under the Landlord and Tenant Act and under the Rent Control Act.

When we introduced the rent control legislation and proclaimed it, we undertook an extensive public education program at the Ministry of Housing, including television ads and so on. I'd like your assessment of whether that was the kind of program you'd look for in terms of education for landlords and tenants, or if you have suggestions about how to make it better. But could you suggest how we can put the need strongly enough that we don't get opposition criticism that we're wasting money?

Ms Garrett: I wish I could answer all of that, but I'm sure there are groups that you can consult with on this topic. I think it was important that we got news out to tenants that there was a law change with rent control. Having been part of the original rent control appeal board back in the dinosaur days, one of the problems I found with that system was that tenants didn't know they had the right; they were all landlord applications.

So I think it's important that tenants and the general public have to be aware that the law is out there. I don't think you can leave it just with a television ad, because that's gone. People need something in writing, the same as you did here, to watch. So I think it's important that the tenants and the landlords know that something is being written and they could get it.

1120

Mr Winninger: Just on this question of education, I think you know the Ministry of Housing has a booklet now that spells out the obligations of landlords under the Landlord and Tenant Act. I take it you'd like to see that

expanded maybe to include a section on apartments in houses and perhaps care homes?

I also think when a home owner applies for an apartment, they should be given a brochure, a book, some kind of training guide saying: "These are your obligations. You have to know what you're responsible for."

Ms Garrett: I think it's more than just, "This is your obligation under the Landlord and Tenant Act." It's going to sound ridiculous, but we do a duty counsel at court and we see this all the time. Landlords show up and they say: "I don't care about that. That's the government's problem. I'm not responsible to these acts." You have small landlords who don't know that they have to follow the Landlord and Tenant Act. They don't know that they have to follow the Rent Control Act. They don't know that they cannot walk into a house that they rent across town at 2 o'clock in the morning to see how high the heat's turned up. They just don't know it. "It's my house; I'm responsible for it; I can go into it."

If somebody's going to be a landlord, they have to have a pamphlet or something that says, "You are responsible." I'm hoping eventually they'll have to be licensed, because I'm a strong believer that if you're going to be a landlord, you should also be licensed, the same as if you're going to sell real estate or anything else. But we don't have that system now, so at least have a system where the landlord will have a book so that he doesn't go into court and say he doesn't know. I believe 90% of the problems with small landlords happen because they don't know that their home is not their home any more. They give up that right when they rent to somebody else.

Mr Winninger: Mr Fletcher had a question as well.

Mr Fletcher: It's probably too late now.

The Chair: Actually, it is too late, but I feel charitable, Mr Fletcher. We're ahead of time.

Mr Fletcher: Thank you for your presentation. This is a question I asked the mayor this morning. If this legislation passes, and likely it will, do you see people running to have apartments in their houses? Do you see the whole city of Ottawa running to have an apartment in their house to rent out?

Ms Garrett: I don't see a lot of home owners going out and doing it. I hope I can expect to see a lot of tenants calling up property standards and saying: "Okay, now it's safe for me to call you. Would you come over and check it out? I want to know if my kids are safe."

Mr Grandmaitre: You say that 50% of your case load is housing-related issues.

Ms Garrett: Over 50%, yes.

Mr Grandmaitre: You've dealt with close to 1,800 legal questions on housing. I know that you're providing services for the west end of Ottawa. I know other legal aid services are established in all parts of Ottawa-Carleton. Would you know how many illegal basement apartments exist? The mayor couldn't answer this, but who knows, you may know better than the mayor.

Ms Garrett: I think the problem is that people do not phone up and say: "I'm living in an illegal apartment.

Can you help me enforce my rights?" What they do is they go to the landlord and say, "Fix this," and the landlord says: "Why? You're not supposed to be here, and if you call property standards, you're out in the street."

Mr Grandmaître: You mean tenants don't know they're living in illegal apartments?

Ms Garrett: A lot of times they don't know that the area they're living in is not zoned for it, because there might be five or six on the block. I remember when I moved five years ago out of public housing and into the private market, I looked at several basement apartments, and when I asked the landlord if he had a building permit for this apartment, it became already rented.

Mr Grandmaître: How come the tenants' association doesn't help these tenants to identify illegal apartments, and then don't rent them? It's a landlord-tenant responsibility.

Ms Garrett: The problem is it's not up to the tenants' association to police the municipal bylaws on whether or not these things are zoned.

Mr Grandmaître: No, I'm not saying that.

Ms Garrett: We don't have the money to go door to door and ask whether or not the landlord has an apartment in his basement that's legal. We don't have the authority to do that. Unless tenants call us and register with us a problem they have, we have no way of communicating with them.

I don't have the figures on how much money the tenants get now from government to operate tenants' associations, but I remember the first year that Mr Cooke presented a cheque to the United Tenants of Ontario in the amount of just over \$200,000, and as a tenants' group we were ecstatic. This was wonderful. Then our treasurer said "Yes, that's six cents apiece." There's not a lot we're going to do on policing the system on six cents apiece, particularly when United Tenants doesn't get that amount now. The funding, like everybody else's funding, is less than six cents a tenant now.

Mr Grandmaître: Another concern of mine is whether the existing illegal apartments that will be rendered or made legal will respect all municipal bylaws, zoning, fire codes and so on and so forth. How many would you say will be converted—if I can use the word "converted"—or made to respect all of these municipal bylaws? Mayor Holzman said this morning this will create 1,500 additional units for the city of Ottawa.

Ms Garrett: I don't think it will create that many additional units. I think they're going to have to start counting some of those units. They're there.

I was listening to Ms Holzman and I was astonished that she said we don't have a problem here. We do have a problem. The problem might not be in her neighbourhood, but in the middle-middle class or the lower-middle class or below that where people are struggling the problem is there. People are having to open.

I do want to say I hope that just because I gave you examples of the landlords that our clients meet—I can't give you any statistics on this—I'm hoping with humanity that there are more landlords out there, whether with

illegal apartments because of the necessity, who are not like the ones I reported. I really do believe the majority of landlords are decent people. It's just that I get very few calls from tenants saying: "I have a problem. My landlord's following the law and it's just great living here."

Mr Grandmaître: So the right of access—you've mentioned this in your brief—this is a very complicated system that we're having to live under.

Ms Garrett: It's better than the system of one client I had who was in a wheelchair; she had no legs. There was no subsidized housing, so in September three years ago she had to live in a tent on public property until we could find accommodations for her.

I think the city might not like basement apartments, and as this lady said, basement apartments might not be her choice, but I sure would rather live in a basement apartment than in a tent in September.

Mr Fletcher: Was that in Ottawa?

Ms Garrett: In Ottawa, yes.

Mr Cordiano: Why was she living in a tent? I can't imagine why that would be the case.

Ms Garrett: Because she had no place else to live, not on her income.

Mr Cordiano: I think that's outrageous, Minister, how someone would end up in a tent when we certainly fund hostels right across the province to the tune of millions of dollars. I can't understand why someone would be put in a tent.

Hon Ms Gigantes: When did this occur?

Ms Garrett: This was about three years ago. The problem was that she got kicked out of her apartment by a landlord and it took us a while to find a place available. There is not enough affordable housing that there are vacancies available when people come to them.

Mr Cordiano: Someone wasn't doing their job in the housing sector.

Ms Garrett: The problem is that today we have an opportunity with Bill 120 to create more houses that more people can get to.

The Chair: Thank you for your presentation this morning. As I mentioned to other presenters, we will be undertaking the clause-by-clause examination of this the second week of March.

The final presentation of this morning is from Margaret Duncan. We are a couple of minutes early.

Hon Ms Gigantes: She's coming from outside town.

The Chair: We may want to take a five-minute adjournment. If she doesn't come we will adjourn to the afternoon at 1:30.

The committee recessed from 1130 to 1137.

MARGARET DUNCAN

The Chair: The final presentation of the morning comes from Margaret Duncan. Ms Duncan, the committee has allocated 15 minutes for your presentation. You may introduce yourself for Hansard and start when ready.

Mrs Margaret Duncan: I would like you to know that it is a privilege for me to be here this morning with

you and I would say that apartments in houses has been something that I'm very interested in and have followed your legislation closely. I'm hoping this will become law as soon as possible. I am not speaking from a very technical point of view, because I find that difficult, but I would say that I am speaking from experience with apartments in houses because we have one in our house.

My first point is that it's one of the oldest methods of accommodation and housing that I know of and one of the most proven methods of housing. We all remember our grandparents and the so-called young couple and how efficiently that worked. It provided accommodation—sometimes the old aunt—and I think it was also a lesson to us all in human behaviour. You learned how to get along with the people with whom you lived.

Sometimes the apartments were completely separate but sometimes they weren't. That was the olden times, but with the economic times that we are facing presently, I'm quite sure the extended-family concept is coming back, especially in the care of the elderly; that is, sharing part of your home, which is the concept that is being dealt with. That is for background.

In my opinion, it is economical for the tenant and for the home owner. As I've stated, economics are a very big concern today. For the tenant, it should be open to anyone, not just the grandmother or grandfather. It can be another person non-related and it works quite well.

It is usually a plus for the home owner. It always is, because maybe they have outlived the big house. It could be the mature couple who have no more use for the big house and can divide it appropriately and it provides an income.

For the person who is renting, or the persons, it provides, in my opinion, a kind of a sheltered protection. Some people don't like the big condos and the big apartments; this provides often company beside you. It certainly helps the young couple who would have purchased their first house and as yet do not have a family, or maybe a small family. If they have a large enough facility, they can develop an apartment, which helps them with their mortgage payments. Of course, for the mature couple who wish to remain in their own home but the big house is far too big, it provides them with much-needed income, for the mature couple or the mature widow or widower, as well as someone living in the house for security and for friendship. It provides needed accommodation for singles and couples. I've said it's friendlier.

We all know that some of the existing apartments in houses are of inferior quality. We've heard about that from basement apartments and attic apartments, that sort of thing. When the inferior apartments are legalized, they will be subject to all the rules and regulations which govern rental accommodation in this province. From what I know of rental accommodation, I think that some of these apartments should be upgraded. The legality of the new legislation will allow them to be upgraded; they will have to be upgraded.

I very much favour new and improved criteria for apartments in houses, which of course would upgrade low quality and inferior accommodation. In other words, I'm suggesting that there be quite reasonably strict criteria for

developing new apartments. Then, of course, this would apply to the older ones, and they would all be upgraded, working within the rent controls.

I would also say that in my opinion the legislation should apply to both rural and urban areas. I'm rural. I think that both have needs. As I mentioned, we've had an apartment in our house for maybe 20 years, after the family left, and we have a large house. We enjoy the income, plus it's providing a facility for someone. In our particular case, we had quite a sized family, and there were a lot of people in a house with one septic system. Now there are just three people, my husband and I plus the tenant, so there is no added burden on the septic system. In fact, it's considerably less than what we had. So I don't see the environmental aspect being a problem. We all know in rural areas we have to keep our septic systems up to par. An apartment in the house in most cases is actually less than what we had before. So that's from a practical point of view.

But I also favour it in the urban areas. Now, I hear municipal politicians saying it's going to deteriorate their zoning bylaws. I can't favour that. But I do think that there should be firm restrictions on parking. I don't think one apartment should allow more than one car or possibly two. I think that has to be spelled out clearly in the bylaw so that it's not lowering the value of the houses in the neighbourhood. I think the legislation has to be clearly spelled out in that area.

The other thing that I hear from municipal politicians—and I have to admit I am one of them, but I'm speaking on a personal basis this morning. But I hear my neighbours talking about old people, everybody, can have an apartment in their house; they can just tear down a wall. Well, if you have to pay for that and if you decide that you're going to have an apartment in your house and you spend the money to fix it up and it doesn't work out, then it's your house. I don't think anybody should take lightly what they're doing. They'd have to think it over very carefully. It costs quite a bit of money to bring it up to par. I think you people had a program, and I'm not sure if you do now or not, for apartments in houses, but it's quite a large expenditure to do it and you look at it from a long-term point of view.

Those are my remarks at this time.

The Chair: You have provoked some interest. I will begin with Mr Owens. You have a very short time.

Mr Owens: Thank you, Chair. I'll keep my questions circumspect, then.

In terms of your perspective as a property owner and a landlord, you seem like you're not representing any major advocacy group.

Mrs Duncan: No, I'm not. Not really.

Mr Owens: Exactly. One of the issues that's come up during these hearings is the power of entry. It seems to be the view of some of the opponents of this legislation that the power of entry is not permissive enough.

Mrs Duncan: I don't understand.

Mr Owens: The power of entry is giving somebody the ability to enter your premises. The question is, do they need a search warrant? Should they have a search

warrant or should they simply be able to walk into your premises and say, "Mrs Duncan, you have a basement apartment. You have an accessory apartment, and we're here to look at it"?

My question to you is, as a citizen of this province, do you think it's appropriate for property standards officers to still have a requirement for a search warrant to get in to take a look at your property, or should they just be able to simply knock on your door and walk in and provide an inspection?

Mrs Duncan: I will speak again on a personal basis. That wouldn't bother me. I would be happy to have somebody come in and offer constructive—I would like to live within the law. If changes are to be made in upgrading, I would welcome that, but that's my own point of view. I'm not a suspicious person and that wouldn't bother me.

Mr Daigeler: The apartment that you have, that you're building, is it legal or is it illegal?

Mrs Duncan: I don't think it's not zoned for it, no. It's not zoned. It's been there about 22 years. We got in just under the line. I think it's legal non-conforming.

Mr Daigeler: I see. Special zoning.

Mrs Duncan: Yes.

Mr Daigeler: Would you say then that the apartment—I don't want to put you on the spot.

Mrs Duncan: No, that's okay.

1150

Mr Daigeler: You may not want to say this on the record, but I'll ask anyway. But I'm advising you—

Mr Grandmaitre: Be careful.

Mr Daigeler: —that you have the freedom not to answer. Would you say your apartment meets all the health and safety regulations?

Mrs Duncan: Yes, I would say so, very closely. That's the thing: It's in our house and we're conscious of fire and we're conscious of septic systems and water. I would say it comes very close. We keep it in good shape.

Mr Daigeler: But you've had no inspection or anything of that nature?

Mrs Duncan: No, we have not.

Mr Grandmaitre: Did you have a building permit?

Mrs Duncan: When we developed it, yes, we did.

Mrs Marland: Could you tell us what your elected position is, Mrs Duncan, please?

Mrs Duncan: I'm the reeve of Ramsay township and I'm the warden of Lanark county at this time, newly elected. My council know I'm here, but I have no resolution to speak on behalf of council.

Mrs Marland: No, you've been very clear about that.

Mrs Duncan: I don't think they would oppose me; I just didn't get time to discuss it with council members.

Mrs Marland: Did you know that under this bill your existing basement apartment will not be legal because they will not be permitted where there are septic systems?

Mrs Duncan: I've been aware of that, yes. I would like to see that included in the legislation.

Mrs Marland: You don't agree with the exemption—

Mrs Duncan: I would like a checkup and I can't see why it wouldn't be satisfactory.

Mrs Marland: So you don't agree with the exemption for septic systems?

Mrs Duncan: No, I don't.

Mr David Johnson: I was talking to the Ottawa fire chief and he was unable to get on the agenda today but he had several concerns and I'm wondering what your feeling would be with regard to his concerns. For example, he felt that in the basement apartments there should be two separate means directly outside.

Mrs Duncan: Separate? Two separate entrances?

Mr David Johnson: Yes. The draft legislation, for example, permits one exit or entrance through another unit and he feels that this is not acceptable. He feels that there should be two; one could be a window perhaps, but he doesn't like windows because there could be people with disabilities, for example, who may not be able to get through a window. Since he's not able to appear before this committee, what would be your views on that.

Mrs Duncan: I'm very conscious of fire protection and safety; that's one of my concerns. I would favour two entrances if possible at all. The difficulty that you might have with entering through another one would be if it was locked and there was an emergency. I would have concerns about that, but it would have to depend on how friendly the tenants were. Hopefully they are friendly but certainly two entrances are much more acceptable.

The Chair: Thank you, Mrs Duncan, for appearing today. We realize you have come some distance to be here and we appreciate that.

I would remind members before we adjourn for the morning that the afternoon hearings begin promptly at 1:30. We have a small rental problem of our own here in that at 4:30 we must vacate this room, so it's very important that we keep the afternoon session on time.

Mrs Marland: Since we are all in here in the building and it is only about seven minutes before 12, would the committee agree to reconvene at 1 o'clock instead of 1:30 and accommodate the fire chief for the city of Ottawa? We do not have anyone in that capacity listed as a deputation today and I think the committee members would want to hear from non-partisan fire chiefs.

Mr Fletcher: Just to clarify the point: You said that the fire chief couldn't get on. Yes, the fire chief could have gotten on and I think, if they would have phoned the clerk or gotten in touch with the clerk's office, they would have been on the list; is that correct, Mr Clerk?

Clerk of the Committee: That's correct, sir.

Mr Fletcher: So it's not that they couldn't get on. It's just that they didn't attempt to get on, okay?

Mr David Johnson: They can't now.

Mr Fletcher: You're right, they can't now because the agenda is set.

Mrs Marland: Would you support my motion—

Mr Fletcher: No, I wouldn't.

Mrs Marland: —that we start at 1 o'clock?

Mr Fletcher: No, I wouldn't support your motion.

The Chair: Order. Do you wish to make a motion?

Mrs Marland: I'll make that motion, Mr Chairman. We have an hour and 40 minutes for lunch, which we certainly do not need. It's important that we hear from the fire chief of the city of Ottawa. I move that we hear him at 1 o'clock, which is starting our afternoon schedule half an hour early. I think we're all willing and interested to hear from the public, particularly the fire chief.

Mr David Johnson: I second that.

Mr Mammoliti: I don't know about anybody else, but I have to go and check out, because I understand there's a time limit on that. That's going to take me, I believe, about a half-hour to do.

Mrs Marland: It takes five minutes to check out.

Mr Mammoliti: I also need to take care of some business that has come up this morning from my office. I've heard that I need to deal with a number of matters. That's probably going to take me a lot more than the remaining half-hour. I'm not going to support this motion because of the amount of work that I have to do. It doesn't leave us much time to squeeze in lunch at that point as well. For that reason, I can't support the motion.

Mr David Johnson: I wonder if we could look at this in the vein that, yes, it's tight scheduling and it has been brought up here at the last moment. We've heard other fire chiefs, and they're very concerned about this. I think that Mrs Marland put it in the vein that they're non-political and they have concerns that we all want to hear.

But it is tight scheduling and perhaps some of us will find it impossible to be back by 1 o'clock. But my guess is that each party would be well represented, even if one or two or three of us were not able to be here at 1. I'm sure that some of Mr Mammoliti's colleagues would be here, and certainly that would offer the chief to be on record and to give his views. Could we look at it in that vein, if one or two of us couldn't be here, that the others would carry on and hear him?

Mrs Marland: You've been in and out all morning.

The Chair: Order.

Mr Winninger: Mr Chair, we have so far heard from a number of fire officials. I expect we'll hear from a number more. It seems to me that most of the members have arranged their day based on a schedule that was pre-determined that allows us to return a few of the phone calls and do some of the work we need to before we reconvene in the afternoon. Quite frankly, I think we should stick to the original schedule, reconvene at 1:30 with the presenters—we're already timely—that have been slotted in. For that reason, it would seem to me that we should just reconvene at 1:30 as originally planned.

Mr Grandmaitre: I was going to suggest that we meet with the fire chiefs at 4:30.

The Chair: We do not have this room at 4:30.

Mr Cordiano: Is the room booked after that?

Clerk of the Committee: That's my understanding.

Mr David Johnson: Do we come under the provisions of the Landlord and Tenant Act in this room?

The Chair: It's a commercial arrangement.

Mr Grandmaitre: Are we being evicted? Would you check that out, Mr Chairman?

The Chair: We will check, but I think we have trouble with both the hotel and our airline reservations.

Mr Grandmaitre: Then how about 1:15?

The Chair: We have a motion—

Mr Grandmaitre: Give them 15 minutes.

Mr Cordiano: They don't want to do it; let's just forget it.

The Chair: We have a motion for 1 o'clock.

Mr Cordiano: Let's take a vote. It's obvious that the government members don't really want to have the fire marshal come before the committee.

Mr Fletcher: That's not true.

Mr Cordiano: We're trying to make an effort to accommodate him. You're obviously not willing to do that. Let's vote on it. No further discussion is necessary. I move that the motion be now put, whatever you call it.

Mrs Marland: I'd like a recorded vote.

The Chair: Mr Cordiano has moved that the question now be put. All in favour Mr Cordiano's motion—

Mr Owens: Mr Chair—

Mrs Marland: Do you want a 10-minute recess?

Mr Owens: Yes, I do.

The Chair: Well, it's a 20-minute recess.

Interjections.

The Chair: Mr Owens has asked for a 20-minute—

Mr Cordiano: Oh, 20 minutes?

Mrs Marland: He only wanted 10 minutes.

The Chair: The rules require a 20-minute—

Interjections.

Mrs Marland: Ten minutes. We agree with that.

The Chair: We will take a vote on Mr Cordiano's motion at 10 minutes after 12.

The committee recessed from 1200 to 1211.

The Chair: Mr Cordiano has moved that the question now be put. All those in favour?

Mrs Marland: I've asked for a recorded vote.

The Chair: A recorded vote.

Mrs Marland: Yes, I want every one of you who wouldn't listen to the fire chief to be on the record.

The Chair: All in favour of Mr Cordiano's motion that the question now be put?

Interjection: What's the question?

Mrs Marland: You're in favour of—

The Chair: —of Mr Cordiano's motion that the question now be put. All in favour?

Clerk of the Committee: You agree it's in order.

The Chair: The question now be put and I've agreed it's in order. Call their names.

Ayes

Cooper, Fletcher, Mammoliti, Martin, Owens, Winninger.

Nays

Cordiano, Grandmaître, Johnson (Don Mills), Marland.

The Chair: Carried. The question will now be put, Mrs Marland's motion. All in favour of Mrs Marland's motion that the fire marshal appear at 1 o'clock?

Ayes

Cordiano, Grandmaître, Johnson (Don Mills), Marland.

The Chair: All opposed?

Nays

Cooper, Fletcher, Mammoliti, Martin, Owens, Winninger.

The Chair: The motion is lost.

Mrs Marland: I mentioned earlier this morning about the committee clerk trying to accommodate the women's transitional housing people in Toronto at some time—from the Massey Centre. I would like to move a motion that we direct the clerk to accommodate that group. At the moment the clerk's direction, I understand, is that they're taking them all on a first-come-first-served basis of that 80-person waiting list.

We do not at this point have a group like this scheduled and I think it's important for us to hear from a women's transitional housing organization about the pros and cons of this bill.

Mr Mike Cooper (Kitchener-Wilmot): In conjunction with the previous discussion, I think what's happened is that the clerk has rightly done the advertising, taken the list of people who wanted to present and fitted them into schedule. If there is a cancellation I have no problem with slotting these people in.

The point is, there are people who have done it on a timely basis and gotten on the schedule. I did take part in Mr Johnson's conversation, just briefly, with the fire chief and he rightly, like a good committee member, did make the suggestion that he could offer a written submission, which committee members may or may not read but the research people do read these submissions. This is the right way to deal with the committee, to have the written submissions from people who couldn't get on the schedule.

Mr David Johnson: The only other point I would make and perhaps reinforce, that Mrs Marland has indicated, is that this group I think is somewhat unique. They offer service to unwed mothers. I'm not so sure we've heard from any other organization or indeed we have any other organization listed that would have that sort of background.

They are concerned—they have various points of view, let's say, with regard to the fathers, I guess, of the children. I don't think we're going to hear that from anybody else.

If it does come in, and I'm sure they'll write in if that's the only avenue, but they'd really like to give that message first hand to the members because they're afraid a written submission will get lost in a flood of papers. I think it's quite a unique kind of situation.

Mrs Marland: It is a different concern and I think you'll want to hear from them.

Mr Winninger: I was called on behalf of this group last week and I put a request in with the clerk to have them included on our list. So I would support the motion.

The Chair: The members understand that this motion takes precedence over the motion that the clerk is presently working under? All right. Further discussion?

Mr Cordiano: I also support the motion. It's justifiable given the nature of the group and the circumstances.

The Chair: The clerk would like some clarification.

Clerk of the Committee: I will say what I believe you are saying, and tell me if I'm wrong on this. What you'd like me to do is, as soon as there is the next cancellation, to place this group in that time slot, immaterial of the previous motion of the committee. This applies for this group only. Thank you.

Mr Owens: Do you have reason to believe there will be a cancellation?

Mr Grandmaître: Who knows?

Mr Owens: So we are expecting these folks to prepare material, to come in and sit for the whole day on the slim possibility that they may have a slot?

Mr David Johnson: They're not located far away.

Mr Owens: I know. They're on Broadview Avenue.

The Chair: The clerk would like to answer.

Clerk of the Committee: Mr Owens, what we usually do is, the day before they are to appear, groups for instance like Ottawa, we call each individual on the list and ask them if they are to appear. Were there to be a cancellation on that day, the minimum they will get is one day's notice.

Mr Daigeler: Let's vote.

The Chair: Further discussion? Shall Mrs Marland's motion carry? Carried.

The committee will reconvene promptly at 1:30.

The committee recessed from 1218 to 1331.

DON FRANCIS
TOM HOWCROFT

The Chair: Our first presentation for the afternoon is from Thorncliffe Place Retirement Home, Donald Francis.

Mr Don Francis: My name is Don Francis. I operate an 80-bed retirement home in the west end of the city of Ottawa; actually, in the city of Nepean. I've taken the liberty of bringing another owner-operator with me, Mr Tom Howcroft, to speak specifically on the GWA aspect and how this proposed legislation will affect his type of operation and how he services his clientele. I want to thank the committee for allowing us to speak.

In my own home, I've talked with my residents extensively. I've had three or four meetings about this over the last year or two, after Dr Lightman's report came out, and generally I believe they're supportive of our position and concerned that the proposed legislation will affect the services they hire us to provide.

Every philosophical theory, code of behaviour and ideological stand starts with a commitment to a set of goals, and it's always important to know what people believe in order to understand what they're trying to do. As individuals with a professional commitment to long-

term care in this province, we assert that we are dedicated to: the creation, encouragement and promotion of quality care; the establishment and enforcement of standards designed to protect the rights of residents to a safe, nurturing residential care environment; individual respect for the right of every one of us to live as independent a life as possible at all stages of the aging process; and the right of individuals in this province to earn an honest living without taking unfair advantage of others.

In our work with older adults and other physically challenged and emotionally needy adults, we've remained committed to the goal of respecting the rights of others to make decisions for their own wellbeing. We've also gained a tremendous and rewarding insight into the fact that older adults in particular are knowledgeable, hardworking people possessed of the integrity of the individual that marked an earlier generation of Canadians. We believe that these people are entitled to be involved in decisions affecting their quality of care, and we regret that the government has chosen to attempt to enact this legislation in what we feel is a hasty manner.

We believe the residents of our long-term care facilities are owed more consideration than the government has chosen to give them in this legislation and these hearings, and we are here on their behalf as well as ours to lodge our concern.

The government has, in times past, stated a commitment to a consultative decision-making process that values the input of all members of society. We have developed this presentation in the expectation that as owners and operators of retirement care facilities, our input—thoughtful, considered and made with the best interests of our residents at heart—will be given the equally thoughtful consideration we have been assured the government provides to all members of society. Above all, we urge the government to continue to keep the best interests of the residents of long-term care facilities at heart. We believe that can best be achieved by avoiding the temptation to regulate care activities through housing legislation.

As members of the Ontario Residential Care Association, ORCA, we have tried to be a part of ongoing efforts over the past five years to seek appropriate regulation of our facilities. We will continue to be part of that effort, even if the government does not make what we consider to be appropriate legislation for Ontario residents in care facilities.

The sense of community: A residential care facility is very much a community. Neighbours become friends, family becomes a solid topic of conversation, stories of past, present and future plans are exchanged, and the daily tasks of living a good life are completed. The community we work in, however, is very much a caring community: People generally do not come to live in our facilities unless they need some form of personal or medically related care. Province-wide, the average age of people entering a retirement care facility is 83 years. Most have trouble preparing their own meals, bathing, administering their own medicine or doing their own housekeeping. Some need 24-hour security and professional care support. Some of them are isolated by the

sporadic provision of community services, such as home care and Meals-on-Wheels. These organizations are fine, they do an excellent job, but cannot provide the one thing all of us need: a social, caring environment.

People are not forced into our long-term care facilities. The decision to enter a retirement home is generally made by the resident or his or her family with the advice of the resident's physician. Above all, residential facilities are not just rental housing units. People do not come to our facilities unless they need specialized care in a communal environment. Unlike boarding homes, residential care facilities offer personal care and medical supervision. Many owners and operators are members of the Ontario Residential Care Association, an organization dedicated to setting and meeting standards within our association. It is an organization dedicated to continually improving the quality of life for our residents.

This brings us to one reason we believe the application of the Landlord and Tenant Act provisions to residential care facilities is inappropriate. We are not simply warehousing the elderly and infirm; we are caring for them in a warm, supportive environment. Our facilities provide socialization and/or interaction programs. We make available community outreach activities, pastoral services, meals, housekeeping, laundry services, transportation and personal care programs. We provide 24-hour security and professional care support and we provide assistance with bathing, eating, dressing and medication. We listen to their worries and help where we can. We encourage the establishment and success of residents' councils to bring concerns and interests of residents to our attention.

We are totally committed to the comfort and care of the people who live among us. That is what care means to us. We do not appreciate being lumped in with lax, perhaps even disreputable owners and operators of other types of residential housing that do not provide care for their residents. A boarding room does not contract to provide care. We do.

The Lightman commission did not address these differences in housing options that are available and this, in our view, is a gross omission. In effect, the Landlord and Tenant Act provisions will seriously and negatively affect our residents' sense of community. Under the act, no tenant can be asked to leave except in accordance with the legislation. An important characteristic of retirement homes is their communal nature and the close day-to-day interaction of all residents and staff. Consequently, a resident who becomes aggressive tends to diminish the quality of life for all. Often, it is the residents themselves who determine the acceptable physical, mental and emotional norms of the individual facility.

1340

With a 75% occupancy rate on average across the province our experience has shown that residential care facilities that provide poor care or charge too much do not thrive. For us to run a successful and financially viable home for our residents, we are all under a tremendous pressure to continually improve our service while keeping the ultimate cost to residents down. Residents have been known to vote with their feet, and our experience shows that market competition is an excellent

mechanism for helping ensure that retirement home owners provide the kind of caring service that residents need, expect and deserve. The fact is, we do not need rent controls to keep costs competitive. The rent control legislation for residential care facilities simply does not make sense in this market.

We are in this business because we care about older adults and those younger adults whose mental or physical conditions require further attention. We are a member of our provincial association, the Ontario Residential Care Association, an organization which promotes quality care. There are, however, people in the business who do not run exemplary homes and who do not provide adequate care for residents of their facilities. We state categorically that we want those people out of the business or at least forced to improve the quality of care they provide. This is housing legislation, which will not determine anything on the care side of the equation.

Members of our association have agreed voluntarily to abide by internally set standards, and our association has lobbied for the past five years to have those standards extended into a formal, province-wide system with a formal dispute resolution system. This government has ignored our request to help improve standards in residential care facilities. Retirement and residential care facilities that are part of our association can offer the public a guarantee that they are getting quality care in an environment that is safe, caring, supportive and responsible. But more could be done to extend that guarantee.

We also state categorically that we believe housing legislation is inappropriate to the retirement care setting in Ontario and that it will damage the quality of life and endanger the health, safety and quality of life of many of our residents. We believe that retirement homes should have separate legislation, possibly as part of the health care system, to deal with the issues facing this sector. The residential care sector should probably fall under the Ministry of Health, with standards for care monitored by municipalities.

We are concerned about the imposition of rent control and how it will affect the long-term viability of retirement homes. Investors are staying away from the rental housing market because of rent control and the same thing is going to happen to the residential care environment. People are not going to want to invest in residential care facilities and it will be almost impossible to raise the capital required to update and continually improve the safety and comfort of residential care facilities. The money won't come from residents because the government, the system, will not allow it; the money won't come from the lending institutions because the property will not hold its value; and the money more than likely will not be available from government. Look ahead 30 to 40 years, to when you will be making a late-life lifestyle decision, and imagine how you would feel going into a residence that hasn't been renovated in several decades. We too will be the losers under rent control.

The proposed amendments to the act will also negatively affect the residents' quality of life by limiting staff ability to give each resident the individual care they need. Specifically, because it stipulates that no tenant can be

asked to leave except in accordance with the legislation, it will be very detrimental to residents who are in need of more care than the retirement home can provide. When residents are admitted to a retirement home, it's under the express understanding, usually in writing, that the resident will be transferred to a more appropriate setting if his or her condition deteriorates to a point where he or she cannot be properly cared for in the facility. The proposed legislation will mean these transfers cannot take place, putting the resident's care at risk. It will also jeopardize the care of others in the home, since an extraordinary amount of staff effort and resources will need to be focused on those who need the most care.

The government has indicated it plans to prevent large fee increases for the care component of retirement home fees. The reality is that the medical and personal care is expensive, and we are unable, and unwilling, to cut payments to staff in order to stretch dollars to the limit. The economics of the situation indicate that the facility would be unable to afford to hire additional staff because monthly fees will be limited by the act. Other residents will ultimately bear the brunt of the burden because there is only so much a dollar can do.

The Rent Control Act, as I perceive it, is a system that has arbitrary limits. They don't care what the costs are; there are arbitrary limits. We shouldn't have arbitrary limits when we're dealing with care with residents.

Housing legislation will be detrimental to residents who should be transferred from one section of the facility to a higher care level. Some facilities have wings or floors designed to accommodate special care needs, and the legislation as it is now written could prevent the staff from moving special-needs residents to the appropriate area where they could obtain more appropriate care.

Housing legislation will be detrimental to residents who tend to wander or are a danger to themselves. A facility tries to ensure it is aware of a resident's whereabouts through monitoring, but the Landlord and Tenant Act does not seem to allow for this extremely important safety-related need. I note that Dr Lightman in his submission to this committee was very critical of a facility that failed to adequately supervise a wandering resident.

We often see situations where this is a concern. For example, one elderly resident, a couple of years ago in my facility, was suffering from dementia and other ailments. She began leaving the building at every opportunity. She was oblivious to traffic. We met with the family to discuss the options to ensure her safety. They suggested locking the perimeter doors of the facility, but we advised that that would discriminate against other residents and would violate safety and fire codes. Ascribing one individual staff person to shadow her was economically unfeasible and the family insisted they could not afford the extra cost of a private nurse. The family was unwilling to assist us by spending more time with the resident or by taking her home pending more appropriate accommodation.

The family was clearly abdicating responsibility in this circumstance. Under the proposed legislation, they could do so more easily. The residence would be power-

less to force an eviction or transfer to more appropriate accommodation because being a danger to yourself is not a reason for termination in the Landlord and Tenant Act. It is not one of the named reasons to terminate a lease.

Housing legislation will be detrimental to residents who are a danger to others. It sometimes happens in our communal living environment that an individual cannot restrain their temper and ends up taking it out on other residents. For example, we currently know of a situation where an elderly resident had a disagreement with a tablemate in the dining room. After punching his tablemate in the face, he was told by the administration that his behaviour was unacceptable and that he might have to leave as a result. He responded that they would have to force him out: "You're going to have to make me leave." The next day, he again lost his temper and threw a walker across a crowded dining room, picked up a metal walker and threw it right across the room. Luckily, no one was injured in this instance. However, this man was clearly a danger to other residents.

The proposed legislation could prevent the administration from taking prompt measures to ensure he did not injure other residents. If we have to go through a protracted period of notices and going to court to get an order for an eviction, somebody like that can do a lot of damage in the interim. And remember, the average age is 83; these are frail people. Push an 83-year-old down and the likelihood of a broken hip is pretty high.

Housing legislation will be detrimental to residents who want to utilize short-term stay options at neighbourhood retirement care facilities. Retirement homes currently accommodate short-term contracts for vacation, respite and convalescent care. They also provide short-term agreements with hospitals for cancer patients or with municipalities for general welfare assistance (GWA) residents. Although these arrangements can be of tremendous benefit to both the care-giving family members and the residents themselves, the Landlord and Tenant Act does not permit this kind of flexibility.

1350

Housing legislation will be detrimental to residents who may need support assistance on short notice. The proposed legislation allows entry by the landlord in certain circumstances and in the case of an emergency. What will happen when circumstances are unclear? I'm thinking of an emergency. It may be an emergency, it may not; you don't know. What if a resident is not responding but there's no other indication of an emergency? If the legislation does not allow entry, then staff will hesitate: "We're breaking the law if we enter this room without proper authorization" They'll hesitate in a situation where it's unclear, and that will result in instances where care will be delayed to someone who is in an emergency situation. Our residents want and need us to enter without hesitation. We knock on the door first, but then we enter to provide the various services and ensure the safety of our residents.

I have had personal experience in this specific regard. Recently, a resident in her mid-90s fell after midnight when she tried to visit the washroom. She is a very competent lady who enjoys her privacy. She does not

want to be checked during the night and we leave her alone, because that's what she wants. When she fell she broke her hip and was unable to get to either the emergency cords or the telephone in her room. She was stuck on the floor. She was missed by our staff at breakfast. She didn't appear at breakfast, so somebody said, "Where's this lady?" and they went looking. We entered the room. The lady was almost unconscious, so she wasn't in a position to give permission for entry, and we found her. It was interesting that as she was loaded into the ambulance she commented that if she'd been in an apartment she could have been on that floor for days.

It is imperative that the legislation recognize the special circumstances in residential care and allow non-emergency access.

Two final concerns: subletting and the GST. The proposed legislation allows residents in a residential care facility to sublet their rooms to others, and this is not acceptable. It is standard practice in retirement homes for the administration to do a full assessment of a perspective resident's needs, interests and abilities. If the facility cannot meet the perspective resident's needs, problems will occur. The perspective resident and possibly existing residents can be at risk.

Currently, residency fees in retirement homes are an all-inclusive housing package, and as such they are GST-exempt. The separation of accommodation charges from care charges will probably mean that the care charges are subject to the federal goods and services tax and maybe the provincial tax too. The proposed legislation will increase the cost of accommodation in a residential care facility.

We strongly encourage the government to consult with the seniors and others affected by this legislation, and we're concerned that consultation has been to date so limited. Consumers of care services provided in a residential care facility have the right to be involved in decisions made affecting their care and they should be an important part of the government's action in this regard. Although we realize the government is interested in taking action on behalf of residents, we are very disappointed that this has not already been done.

Our goal is to care for our residents in the most humane and attentive way possible. We consult with our seniors when implementing some of the changes in our facilities, and as owners and operators we listen to our residents' councils when they bring forward suggestions and complaints.

We have very serious concerns when a government does not even inform the Council on Aging about this upcoming legislation in order to give it time to review the proposed legislative changes, analyse them with resident needs in mind and prepare a response. That organization speaks for older adults and is fully aware of the issues facing people in a retirement care facility. They should have been heard; they should have been at these hearings.

We're concerned that district health councils, the very bodies charged with the planning of our health care system, have not been consulted about this initiative.

We're also very concerned that one week before the

hearings were to be held in Ottawa, the government's own minister, Evelyn Gigantes, did not mention these legislative changes to listeners of a radio talk show right here in town or to residents of Unitarian House when they asked her, face to face, on November 20, 1993.

Finally, we are concerned that the government would even consider putting care of 30,000 Ontario residents currently living in residential care facilities under the jurisdiction of the Housing ministry. If these people simply needed lodging, they would be living in any one of thousands of apartment units designed exclusively for seniors. These people need care, attention, encouragement and assistance, not simply a roof over their head. The fact that government does not recognize that these people need special assistance should be of very grave concern to Ontario residents.

Putting residential care facilities under the Landlord and Tenant Act may satisfy a desire to deal with an issue that is not fully understood. However, it does nothing to actually assess the nature of residential care in our province, nor does it do anything to help us work towards improvement of quality care available to all residents of this province, particularly those who are not quite as able as we are to make our way independently in this world.

Putting retirement care facilities under the Landlord and Tenant Act and rent control does nothing to monitor the quality of care provided within a retirement care facility. It effectively removes us from the long-term care reform initiative under way in this province, and long-term care reform is an initiative we support and encourage.

Putting retirement care facilities under housing legislation ignores the fact that we fill a recognized care niche in the community and in so doing save the government millions of dollars. Hospitals refer patients to us when there are not enough beds to look after them appropriately, and we take care of the overflow people waiting to get into nursing homes and other long-term care beds. In fact, we currently save the government a tremendous amount of money.

We believe this rent control initiative does not address the needs of our residents, and it certainly does nothing to ensure that the quality of care delivered to the people of Ontario in retirement homes is attentive, caring and responsible.

The government has made it clear that it intends to force the legislation through. We ask the committee, on behalf of our residents, to review the wording of the bill so as to address the technical problems we have raised. Action is needed, of course, to ensure excellence in the care provided to the residents of Ontario's long-term care facilities, but we recommend an enlightened action, one that will not compromise our ability to care for the people who are in our safekeeping. Thank you.

The Chair: There are about five minutes left. Perhaps you could paraphrase what you are about to read.

Mr Tom Howcroft: I have four pages and I will try to slide through, but it is addressing a very serious issue, one that was addressed on several occasions this morning.

How a community tends to the needs of the disadvantaged individuals living within it is a measure of the

importance it places on basic human-centred values. While most Ontario adults are able to earn a living, establish meaningful relationships with other people, provide shelter for themselves and their families and, in general, successfully navigate the turbulent waters of day-to-day life, there are many others who simply cannot make their way without a substantial amount of assistance.

Some of these people, approximately 8,000 of them, are living in Ontario retirement homes. They receive general welfare assistance, and the funding for their care is provided by the municipal, provincial and federal governments through a cost-share arrangement.

Application of the Landlord and Tenant Act to the living arrangements of these people is a potentially disastrous concept.

GWA residents constitute a very diverse part of our resident population. They include individuals who are psychologically disabled and people who have suffered head injuries. Some have personality disorders, some suffer from multiple sclerosis, and others are experiencing the onset and continuation of early dementia. Some of our GWA residents have physical disabilities and some are recovering from years of alcohol and drug abuse.

The labels we use for the challenges these people face suggest, but don't fully describe, the difficulties these people have in simply getting through the day. It is very, very hard for some people to cope with a task that most of us take for granted: Getting dressed, eating a meal, holding a conversation with other individuals and purchasing a package of gum can represent enormous mental, emotional and physical difficulties for the people in our facilities. Some have major psychological, psychiatric and mental difficulties that make them prone to aggressive and violent outbursts. Some have suicidal tendencies. Some have emotional sensitivities that make them chronically frustrated and fearful. Many cannot handle money, purchase a bus ticket or travel a bus alone.

Under municipal regulations, up to three GWA residents can share accommodation in one room of a retirement residence. These people require a supervised setting but do not have the financial means to afford the accommodation. They need help, and we provide it.

1400

Under a purchase-of-service agreement signed with the municipality, retirement homes provide our GWA residents with three meals a day, three between-meal snacks, a five-to-one staffing ratio 24 hours a day.

We provide them with assistance with bathing, dressing and personal finances. We provide in-house and ongoing counselling, coaching with life skills such as cooking, cleaning, and making bank deposits. We supervise any medication they are required to take and supervise their government allotment of spending money, on a monthly, weekly, daily, and sometimes twice-a-day basis. We also facilitate access to other community support services. Many of our GWA residents are vulnerable and all of them need to be protected so that they are not taken advantage of.

In many cases, we have to be available for immediate

crisis intervention to handle aggressive, potentially violent behaviour and intervene with individuals who may be undergoing a psychotic episode. In these situations, we are the front-line workers.

Caring for GWA residents is a very big and very serious responsibility. Bringing retirement homes under the Landlord and Tenant Act is inappropriate and potentially dangerous: It could possibly hamper our ability to intervene in crisis situations; if a resident becomes ill with a contagious disease, we may be unable to isolate him or her from their companions.

It is impossible to determine how much of the per diem rate should be allocated to care and how much to accommodation. The whole discussion is irrelevant. The per diem we receive to provide care, accommodation, meals and services for each GWA resident, \$34.50 a day, is not a lot of money. In the real world, an individual could not obtain all the benefits we provide for that amount. It probably does not even pay for the accommodation portion.

Determining how much of the total is eligible for rent control would be impossible. In fact, involving retirement home owners in the discussion is irrelevant because we do not determine the rates for GWA residents. The rates are established by the municipality with guidelines set by the province. We have no say in what the ceiling will be.

The legislation's other provisions would prevent us from carrying out our legally required, and morally imperative, responsibilities for GWA residents. We strongly recommend the government drop its plan to implement this legislation. While it would put all residents of retirement facilities at risk, it would especially endanger the lives of 8,000 of the 30,000 people currently living in Ontario's retirement care facilities. This we cannot afford to do.

We strongly urge the government to enlighten its approach to the access arrangements it is currently planning to change with this legislation and help us continue to ensure that care provided to Ontario residents in residential facilities is geared towards the ultimate benefit of the residents.

Sorry I went over a little bit, but I wanted to get it out.

The Chair: Thank you for appearing today. The committee will be taking up this bill for clause-by-clause consideration in the week of March 6.

COMMUNITY HOUSING RESOURCES COALITION

Ms Donna Pettey: Good afternoon. My name is Donna Pettey; I'm a staff person at the Canadian Mental Health Association here at the Ottawa-Carleton branch. With me are Stella Andriopoulos from Ottawa Salus Corp and Ann Popovich from Project Upstream, two supportive housing programs in Ottawa for people with severe and persistent mental illness, and Heather Smith Fowler, the chairperson of our housing coalition.

We're here today as representatives of the Community Housing Resources Coalition, but we're also here today to provide different perspectives on how Bill 120 will affect how housing and support services are delivered in this community to people with mental health problems. As a general statement, we can say as a coalition that we

believe all citizens of the province have the right to equal treatment under the law, and in that we support Bill 120 as it applies to supportive housing, with the inclusion of some of the points we're going to make today in our presentation as a frame of reference for our support.

The Community Housing Resources Coalition has existed as a committee of the Canadian Mental Health Association here in Ottawa since 1986, and in that time we've worked in many different ways—advocacy, research, program development—all towards the goal of increasing adequate and affordable housing and support services for people with severe mental illness. The coalition has representatives from the housing sector, both supportive housing providers and public and social housing providers, the emergency shelter sector, community and hospital support workers, and family members and consumer survivor representatives as well.

If we look at supportive housing in Ottawa-Carleton for people with mental health problems, most of that housing is currently exempt from the Landlord and Tenant Act; that would affect approximately 1,000 individuals, the majority of whom live under and within the domiciliary hostel program. Other programs, though, such as the two represented here today, are non-profit housing, so there are some resources in that as well.

Over the years, the housing coalition has responded to a number of policy initiatives from a number of different governments, provincial and local, which affect the provision of housing and support services for people with mental health problems. We've submitted a housing and supports plan as part of mental health reform to the district health council, outlining clearly what housing and support services have to be in place if we're to create a truly supportive community here.

The recommendations in our plan clearly reflect the policy directives of the Ministry of Housing, the Ministry of Health and the Ministry of Community and Social Services: the need to develop sufficient permanent housing options and a variety of permanent, flexible, portable support services for people.

While this option is often criticised as being too narrow and only offering one choice, we've always believed that the number of housing options that can be created through this is limited only by our lack of imagination. Regardless of whatever anyone's particular philosophical view is, the fact remains that in Ottawa-Carleton, as in other Ontario communities, our existing system of housing and support services for individuals with mental health problems is very inadequate to meet the demands placed upon it.

To give you some indication of how inadequate, in a region the size of Ottawa we have exactly eight case managers to support 100 people, one daily living support worker to support 10 people, and one continuous care team to support 100 people. That's it in terms of portable, flexible support services, and there are absolutely no crisis response services available at all available to people if they get into crisis in housing situations. These may seem, on a surface level, to be unrelated to what we're talking about today, but as I think you'll find as we move through our presentation, it's absolutely crucial that we

consider these questions as well if we are really concerned about providing good housing for people in this community.

The changes proposed under Bill 20 will greatly impact on how this already inadequate system functions. Stella and Ann are going to talk from the supportive housing perspective, and Heather's going to sum up at the end with some specific recommendations we have developed as a coalition and will be submitting to you in written form.

1410

Ms Stella Andriopoulos: Ottawa Salus Corp is a not-for-profit organization established in 1979 and providing housing and professional rehabilitation services for adults recovering from psychiatric illness. We are funded primarily by the Ministry of Health, the community mental health branch. We own and operate three halfway houses or group homes and we lease 26 apartments as part of our co-op apartment housing program. As well, we provide case management services to clients living in non-Salus residences. At any one time, we serve approximately 100 clients. I'm here today on behalf of the board of directors of Salus to explain to you why rehabilitation programs such as the halfway houses of Salus should be exempt from the Landlord and Tenant Act.

The primary purpose of our halfway houses is rehabilitation, not accommodation. Our programs are transitional, and we provide temporary residences. We work in a partnership with our clients to assist them to learn life skills and social skills so that they may move on to more permanent accommodation and be successful in their future permanent housing. We actively assist in securing that housing. The length of stay in our homes is flexible and ranges from nine months to three years. The program ends when the client feels he or she has met the goals of his or her individualized program.

Our three halfway houses have nine, 10 and 20 clients respectively, living together in a spirit of cooperative living and often sharing double bedrooms. The clients learn to cook, clean and do the necessary housekeeping chores to keep the houses running smoothly. The clients are assisted with identifying personal goals, and support is given to attain these goals. Life skills trainers are present in the homes 24 hours a day.

Prior to entering our rehab programs, all potential clients are made aware of the nature of our programs and that certain behaviours are not acceptable for reasons of safety and security to all residents and to the rehabilitation goals that each client has set for him- or herself. We work with a very challenging population. We admit clients who have severe and chronic schizophrenia with a past history of several relapses. Women who have experienced severe sexual abuse and who may now be trying to cope with self-mutilating behaviours also live in our homes. We have clients who have been convicted of criminal acts, including manslaughter, and are mandated by the courts to live in our homes. And we admit clients who have a mental illness as well as drug and alcohol problems or who may have a mental illness and a chronic physical problem such as sight impairment. Also, we accept some clients who have mental illness and who are

also developmentally delayed.

One of the reasons we accept such a wide range of clients is due to the lack of resources similar to Salus in the region. It is extremely important that, with such a wide range of presenting problems, we work hard to establish a safe and secure environment so that the clients can work on their goals. Thus, acts of aggression towards staff or others are not permitted, nor is alcohol or drug abuse. Threatening behaviours which make clients feel unsafe and insecure are not tolerated.

On occasion, perhaps only three or four times a year, in consultation with the other clients living in the homes, we are forced to discharge clients from our programs immediately and without notice. In these situations, the rights of the individual cannot override the rights of the group if the rehabilitation program is to remain central in the process.

We believe that if such rehab programs fall under the Landlord and Tenant Act, the accommodation becomes the primary purpose and the rehabilitation focus is undermined. We must have the same flexibility to act as a three-month alcohol recovery program, which would be exempt because the average length of occupancy is less than six months. Salus offers structured and professional rehab services for persons having psychiatric illnesses. In order to successfully operate our programs, we cannot be bound by the constraints of the Landlord and Tenant Act.

Our recommendations for changes to Bill 20 are:

An organization that provides rehab programs in a supportive setting for a temporary period should be exempt from the Landlord and Tenant Act. Programs such as Salus would have to apply for an exemption under certain guidelines and criteria. Also, part III, subclause 27(2)(c)(iii), should be changed so that the six-month average length of stay allows for a flexible length of stay.

My final point: As mentioned earlier, Salus also has 26 co-op apartments. Counsellors work with the clients to assist them to set goals for themselves and to help them with their life skills. This program offers permanent homes to these clients, and the leases for these homes are in the corporation's name.

We recommend that these homes be included under Bill 120. However, we would also recommend that where tenants share kitchen and washroom facilities and the safety of other residents is compromised by an ongoing tenancy of another resident, a process be provided for a quick temporary relocation of a tenant until a full landlord and tenant hearing can be organized within five working days. This accelerated process would allow for a speedy eviction process if necessary.

Please remember that housing is a complex, multidimensional issue and that one remedy for all the problems tenants encounter is an impossibility. Surely there are other ways to develop standards and guidelines for rehabilitation housing programs.

Ms Ann Popovich: I'm here today as president of Project Upstream, a non-profit, charitable corporation. We were incorporated in 1985, and since 1988 we have been funded by the Ministry of Health.

We provide housing and support to 22 residents. We have two group homes. I should state at this point that we do not own any of our housing options. We have agency leases with organizations like City Living and the Centre-town Citizens Corp, and we have some apartments with a co-op. We provide housing and flexible supports to 22 residents; nine of these are in our two group homes.

Our housing is permanent. By that I mean our residents can live with us as long as they want to live with us. The support we provide is flexible, which means of course that at times our residents will require a great deal of support, particularly at times they may be having a recurrence or relapse of their state of health.

We have had challenges over the years with some of the difficulties Stella has mentioned. One of the things we have found, though, is that there are avenues to cover some of these situations. If someone is becoming ill or is psychotic and aggressive, this is a matter very much related to the Mental Health Act and we do have provisions where we can act very quickly under that act. There have been times when, as support, we have had to use all of our energies and efforts to support a person's being admitted to hospital because of those health and safety issues.

Our residents are a very important part of our organization. We hold annual think tanks, as we call them, planning days, and the residents have theirs. This year, theirs will precede our board planning day because we want very much to incorporate their initiatives and goals into our board planning. We could potentially have a board of 15 members; at present, we have 13. Two of those board positions are occupied by residents, and our residents are consulted on an ongoing basis on any matters to do with policy.

I feel very strongly that we do need to have changes to this act. When we talk about integrating into our community people who have had mental illness or who have ongoing mental illness, we absolutely cannot do it by giving them fewer rights and freedoms than the rest of us enjoy. What we then do is create mini-institutions in our community. That's not to say that I'm not concerned there will be difficulties and that we will face challenges if we change this. Change always brings difficult issues we will then have to deal with, because we don't live in a perfect world.

I feel very strongly that the support we provide to our residents has to be of the nature of making them realize that there's an accountability factor we all face living in society and that ongoing support does not exempt them from some of the same checks and balances we would all encounter if we were to breach the laws and regulations that govern the rest of us. If clients are aggressive to one another, certainly that becomes an issue for the police. If I were living in a situation with another person and I became aggressive, they would have every right to charge me. There are mechanisms in place currently that we can use for people we would consider dangerous or a threat.

For the most part, I feel these changes will be good ones. I don't think they will come without challenge. One of the challenges we face as a fairly small organization—we currently have two full-time equivalent staff posi-

tions—is that there just aren't enough supports. I think you've probably heard this from every quarter today. Although I'm being redundant, it's an important point. A lot of the crisis services that are being proposed are things we need very much. Currently, we provide 24-hour crisis support to our residents, but at times it can be very difficult because we do this with a combination of paid staff and volunteer support.

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The other initiative we feel very strongly about is that even at the times we have had to negotiate one of our residents leaving to go and live somewhere else, this did not take place in the form of an eviction. One of our commitments to our residents is support, and if we summarily evict, we're not just evicting them from housing: Because our housing and support are linked, it means we're evicting them from our support. We have made every effort in the past that if a person is not doing well in one of our living environments, there's a lot of discussion and a lot of support with the person around exploring options, trying to make it work. If it absolutely can't, every effort is made with the resident to link them to something else that would fit better for them.

When people leave our housing, whether because they've decided to move on or whether because, as I've just said, the fit isn't right, we make a commitment of three-month availability of ongoing support, either to where we're linking them or to wherever they have chosen to go. Not all residents choose to follow through on that three months, but that option is there and is always offered.

My other interest in this issue is as a parent of someone who does live in psychiatric supported housing. I really feel that part of the learning process for anyone to reintegrate into the community is to learn to be a fully participating member of society. If it requires support for that to happen, that's very important, but the rights and freedoms have to be there.

Ms Heather Smith Fowler: I'm going to make a brief summation of our points. As you can see from what Ann and Stella have said, our delegation represents a wide range of opinions on Bill 120. As chairperson of the coalition, I want to remind the committee that our delegation supports in principle Bill 120 but that the concerns that have been expressed here today are real and will have real implications for the people this bill is designed to try to support.

It's important to remember that the circumstances that lead to eviction are rooted in the total inadequacy of care and support that constitutes our mental health system. Failing to recognize this and rectify it with action beyond these changes to the Landlord and Tenant Act, which are very needed, is going to perpetuate the situation in which housing providers find themselves. They're blamed for not being tolerant or flexible enough to support people who are hard to house.

Specific recommendations are, for example, that the government link the implementation of Bill 120 with the service development priorities of mental health reform, specifically case management, crisis services, peer and family support systems. Consumers and survivors need to

have access to the support systems they've identified as being necessary to help them live in the community with the rest of us.

The government must also link the implementation of this legislation to the emergency shelter reform, because emergency shelters and family members bear the brunt of the system dumping people who are hard to house or problematic as tenants.

I have one brief comment on the changes to the Rent Control Act. The changes proposed, where a person is charged rent apart from the care services and meals, definitely reflect the position our coalition has taken to try to delink housing and support services, so that somebody's housing isn't dependent on anything other than that person fulfilling his responsibilities as a tenant.

We have some questions about the implementation of that, however. Locally, in the domiciliary hostel program Donna mentioned, many of the changes proposed wouldn't be permitted by the contract for services the hostels have with our regional social services department. For example, for the set per diem rate operators are required to provide 24-hour supervision, three meals a day, supervision of medication etc. If somebody chooses to eat elsewhere, for example, or not take their medication, does this mean the region will end up paying a reduced per diem to the operators? It's questions like these that have to be answered.

Given that these changes imply that the Landlord and Tenant Act will apply to supportive housing, there need to be resources directed to the community so that tenants have a clear understanding of their rights and responsibilities; otherwise, changing the system to extend these basic rights will be a hollow gesture. They must be aware of their rights and able to exercise them, especially if those rights are being violated.

Finally, housing providers need assistance as well to plan for the potential impact of these changes.

I don't know if there's much time for questions, but we're here if you want to ask them.

The Chair: About a minute and a half per caucus.

Mr Cordiano: We'll try to perform miracles in a minute and a half. Your presentation speaks right to the heart of the matter with respect to Dr Lightman's recommendations, and some of the concerns we've expressed in these hearings regarding fast-track evictions and questions around the provision of care; the mere fact that this is a type of tenure which is unique, that there are certain characteristics of the type of tenure your tenants are offered that make it quite unlike other circumstances. I hope the minister is listening to this attentively. She's here today. It was indicated earlier by one of her members that perhaps there will be changes to the legislation to allow for some of these concerns, by way of amendment when we get to clause-by-clause.

I don't have anything else to say. I don't know if you can comment on what I had to say in 30 seconds.

Ms Andriopoulos: I just want you to imagine this: If I have mental illness and I'm abusing alcohol and I've got a woman next to me who is a recovering alcoholic and has mental illness, Stella the landlord cannot evict me

because I'm abusing alcohol, under what you're proposing, until one appears before a hearing. Is abusing alcohol a condition for receiving an eviction under the present amendments? These proposals don't make sense to me. I think that's a summary of what I had to say.

Mrs Marland: These proposals don't make sense to us either. I hope the government members are listening to the areas of concern you've identified, because we will be looking for their support for our amendments to address the concerns. They are very grave, very serious concerns you bring to this committee today, and we appreciate very much the fact that you've gone to the effort to do that. Recognizing the rights of individuals versus the rights of the group in a communal setting living is—it blows my mind that the bill is drafted the way it is. I can't believe these concerns have not been identified by the people, if not in this ministry, in the Ministry of Health.

Ms Andriopoulos: There are no standards of operation under the Ministry of Health community mental health program for a program such as ours. The Landlord and Tenant Act shouldn't be the policymaking tool for developing standards.

Mrs Marland: You have an Ontario Association of Interval and Transition Houses, don't you?

Ms Andriopoulos: No, Salus Corp is part of the Ontario Federation of Community Mental Health and Addiction Programs, which will be doing a presentation next week in Toronto.

Mrs Marland: I just wondered whether they had met with the government.

1430

Ms Pettey: Could I respond, just briefly, to that comment? I wanted to reclarify as well, though, the position—and it's addressed in our written brief—in that when congregate living arrangements are discussed, I think you also have to consider that you can't remove the rights from everyone living in that situation and use the rationalization that it's because they're sharing bedrooms and that when this is the type of housing form that our system has developed.

Most people don't even want to be in anyway, but the system offers no other choice for them. In fact it penalizes individuals and removes rights from them for living in a building form that our system has seen to providing to them that is inadequate itself. It's kind of an unfair catch-22 situation for people.

Mrs Marland: We do have examples that are better.

Mr Tony Martin (Sault Ste Marie): I can't help but meld the presentation before with yours in terms of some of the concerns that have been raised and will come forward. Certainly pieces of legislation that are put in place then need to be worked with by people in circumstances that oftentimes don't present uniformly or in the same manner. So there will be challenges for all of us as we try to make this work in the interests of equity and fairness and protection for all people.

You say you're in support of that kind of equity—

Ms Pettey: Absolutely.

Mr Martin: —and you're saying that there will be some challenges as it rolls out and we need to be aware of that in providing it.

The criticism that was made earlier, that I want to hear very briefly from you about, is that we haven't consulted widely enough. It seems to me Lightman consulted for two years. Did you present to him your concerns, and do you feel that you were heard in the report he came down with that had some 150 recommendations upon which this legislation is built?

The Vice-Chair (Mr Daigeler): Will you put the question.

Mr Martin: I guess I had one other brief one.

The Vice-Chair: You don't really have much time.

Mr Martin: The Salus Corp residents have a maximum stay of three years. What is the average stay?

Ms Pettey: In terms of the Lightman commission, as a housing coalition we made a presentation and submitted a brief. Lightman only looked at domiciliary hostel and unregulated accommodation. It did not include non-profit, rehabilitative housing such as Salus. When we presented to the commission all of our recommendations, which we felt were fairly reflected in the final report, had to do with our perceptions of the domiciliary hostel program in Ottawa-Carleton, as it is the biggest provider of housing services for people with severe mental illness. We did present, it was well consulted, and we felt that it was a very fair outcome from that.

Ms Andriopoulos: I might add that Mr Lightman came to our home on Fisher Avenue and said: "Sorry, Stella, we're not going to visit your other two homes. This is not why we're here. We're not here for this kind of rehabilitative program. This is not the purpose of our commission." So he didn't visit the other two homes.

The Vice-Chair: Does someone want to answer the second question?

Ms Andriopoulos: The average length of stay at Salus Corp? It depends. It's a very individualized program, but the average length is definitely over six months. It could be eight months in one program. Some of our programs have different goals. Three years is not necessarily a maximum. If a person needs three and a half years, we allow for that as well. That's because of the Graham committee and the suggestions from the Graham committee report.

The Vice-Chair: Thank you. We appreciate your presentation. You are going to submit something in writing as well.

Ms Pettey: Yes, we will by Monday.

The Vice-Chair: If you'll send it to the clerk, please, he will give it to the members of the committee. We certainly appreciate your presence today as well. A very interesting presentation.

Mrs Marland: We look forward to getting that.

Mr Cordiano: On a point of order, Mr Chair: This is a fundamental point that we were dealing with, and I would ask the committee's unanimous consent just to allow the minister to respond to that for a moment. I think what Dr Lightman did was to consult with a variety

of groups, but obviously this is not an area that he did consult these groups on and yet—

Mr Fletcher: It is not a point of order.

The Vice-Chair: Mr Cordiano has asked—

Interjections.

Mr Cordiano: Could I finish the point of order, sir?

The Vice-Chair: No. Order, please.

Mr Fletcher: Have the standing orders changed?

The Vice-Chair: Mr Cordiano requested unanimous approval of the committee to ask a question of the minister. Do we have agreement? No, we don't.

Mrs Marland: No, they're scared to hear the answer.

REGROUPEMENT FRANCOPHONE
D'OTTAWA-CARLETON

Le Vice-Président : Les intervenants présents seront le Regroupement francophone d'Ottawa-Carleton, si vous voulez, s'il vous plaît, vous asseoir.

Comme vous le savez probablement, vous avez 30 minutes pour votre présentation. Nous aimerions bien avoir quelque temps pour la période de questions. Vous pouvez faire votre présentation en français ; nous avons la traduction simultanée. Alors, s'il vous plaît, si vous pouvez vous présenter vous-même pour le Hansard et commencer, s'il vous plaît.

M^{me} Anne Smith : Je m'appelle Anne Smith et je suis accompagnée de Marco Leboeuf. Nous travaillons tous les deux à Action-Logement, qui est un organisme communautaire d'aide en matière de logement pour la région d'Ottawa-Carleton. Nous faisons aussi de la revendication pour les locataires.

Nos services à Action-Logement sont offerts dans les deux langues officielles et nous avons aussi du personnel qui parlent le créole, l'arabe et le somalien. En 1993, nous avons eu 17 000 clients, et environ 65 % de ces clients étaient à la recherche d'un logement.

Nous sommes ici aujourd'hui surtout pour parler au nom du Regroupement francophone d'Ottawa-Carleton sur le logement. Ce comité est composé d'intervenants de 13 organismes francophones communautaires. Ces organismes travaillent auprès des locataires et des personnes sans logement permanent. La mission du Regroupement est de promouvoir l'accès au logement abordable pour les familles et les individus à faible et à moyen revenu.

Donc, je vais laisser la parole à mon collègue Marco, et je crois qu'on pourra répondre tous les deux aux questions, s'il y en a.

M. Marco Leboeuf : Pour le Regroupement, le projet de loi 120 aura pour effet d'augmenter le nombre de logements sécuritaires et à prix abordable ainsi que d'assurer la protection de certains locataires qui n'en avaient pas auparavant, tels les résidents de maisons de soins et lesdits logements illégaux. Nous supportons donc l'adoption du projet de loi 120 le plus tôt possible.

En réaction au projet de loi, le Regroupement a fait part de quelques commentaires et questions dont je viens vous faire une synthèse aujourd'hui. Le mémoire du Regroupement sera envoyé d'ici peu, mais pour la présentation d'aujourd'hui, nous nous sommes inspirés

des principaux éléments du projet de loi sur la protection des résidents tirés du communiqué du ministère du Logement qui a été diffusé le 23 novembre 1993.

Nos réactions face aux changements qui seront apportés à la Loi sur la location immobilière : Les changements sur les droits de résidents de maisons de soins est primordial. Ils ont le droit à la vie privée et à la même protection que les autres locataires. Par contre, nous sommes concernés à savoir qui informera ces résidents et leur famille de leurs droits. Nous suggérons donc au ministère du Logement de travailler de pair avec les organismes communautaires pour que ce travail d'information et de sensibilisation soit fait de façon coordonnée et efficace.

1440

Quant aux changements apportés à la Loi sur le contrôle des loyers, encore une fois, plusieurs locataires bénéficieront de ces changements. Par contre, une grosse question nous est apparue.

Comme vous le savez, pour les pensionnaires et les chambreurs, il y a une clause qui dit que si nous partageons la salle de bains et/ou la cuisine avec le propriétaire, les deux lois ne s'appliquent pas. La question que nous nous sommes posée c'est, pour les maisons de soins — et nous avons eu la définition ; nous n'avons pas trouvé de réponse — est-ce que cela va s'appliquer ou est-ce qu'elles vont être catégorisées à part ? La question qui se posait : si un propriétaire décide d'avoir 20 chambreurs dans une maison de soins et décide de partager sa cuisine, est-ce qu'ils vont être protégés ? Donc, c'est juste à savoir s'il va y rester une faille pour les maisons de soins avec cette clause qui dit que ces personnes ne sont pas protégées.

Une autre question : est-ce que le ministère a mis en place un processus d'information auprès de ces locataires sur leurs nouveaux droits ? Une inquiétude qui est sortie c'est qu'il semble, d'après nos lectures, que cette partie du projet de loi 120 est en vigueur depuis le 23 novembre et nous n'avons reçu aucune information ou vulgarisation, aucun document à ce sujet.

Tous ces changements apportés qui ont pour effet d'augmenter le nombre de logements, tels les appartements dans les maisons ou encore les pavillons-jardin, sont pour nous des changements appréciés. Nous savons tous qu'il y a un grand manque de logements. En Ontario, et plus particulièrement à Ottawa, le taux d'inoccupation était, selon le rapport du SCHL, de 1,8 % en octobre 1993 à Ottawa. Nous sommes, par contre, très inquiets par rapport au nombre d'inspecteurs. En effet, à Ottawa, le nombre est passé de douze à quatre en moins de dix ans. À Cumberland ainsi qu'à Gloucester, il n'y a qu'un seul inspecteur par ville ; à Vanier, on en compte deux. Nous voulons que le gouvernement tienne compte de ce fait dans l'allocation de ses budgets. En augmentant le nombre de logements, il faut tenir compte aussi qu'il faudrait augmenter le nombre d'inspecteurs.

Une suggestion qui est apparue : Ottawa actuellement est en train d'instaurer un programme proactif. Il serait donc apprécié d'instaurer et de maintenir ces programmes comme Ottawa va le faire.

Pour ce qui est des normes de salubrité et de sécurité, ce que le ministère suggère sont des normes raisonnables. Ceci n'est pas assez spécifique. Il faut que ces normes soient adéquates et il faut être certain qu'elles ne seront pas moindres que celles déjà en vigueur dans les municipalités.

Je finirai en encourageant le gouvernement à continuer d'appuyer les organismes communautaires tel Action-Logement, afin de s'assurer que les locataires aient accès à l'information et connaissent leurs droits afin de les faire respecter.

Le Vice-Président : Est-ce que ça termine votre présentation ?

M^{me} Smith : Oui.

Le Vice-Président : Merci beaucoup, et j'ai bien compris que vous allez envoyer quelque chose par écrit à monsieur le greffier. Alors, il y a cinq minutes pour chaque caucus.

Mr David Johnson : I will be speaking in English, if you don't mind.

You mentioned inspectors and the concern with regard to inspectors, and I think this is a most valid concern. The observations I would make on that would be that certainly fire inspectors will be required and certainly property standards inspectors will be required.

We've had a deputation, for example, from the fire chief of the city of Mississauga, indicating that 87 man-years, or person-years let's say, of inspection duty would be required to meet the needs of the accessory apartments. That doesn't even touch on property standards. There may be other bodies involved. Hydro may be involved in terms of inspecting.

In addition, concerns have been expressed by municipalities, even with the so-called strengthening of the right of entry, that even so, their powers to enter to do the inspection are still inadequate and they will not be sufficient for municipalities, either through the fire department or property standards or building department, to do the kind of inspections that they feel will be required to ensure the safety.

Since you've raised this as a particular interest and my sense was that you were indicating that perhaps funding, perhaps some sort of grant, may be the answer in terms of provincial support, if the provincial government is going to say, "This is the way we have to go," is the provincial government also going to fund the inspection program in addition to telling the municipalities that they have to do this? If that's what you're saying, number one, then number two, what sort of financial support do you think the government should give to the municipalities to accomplish this?

M^{me} Smith : Pour la première question, je crois que c'est ça. On est en accord avec ce que vous dites dans le sens qu'il faut qu'il y ait assez d'inspecteurs pour être capable de voir ce qui existe dans certains logements. On parle juste présentement des logements qui existent sans parler même de ce qui s'en vient. Mais on a des cas et des cas de gens qui viennent nous voir qui appellent les inspecteurs et les inspecteurs nous disent ce qu'ils voient dans ces logements-là. C'est absolument abominable,

l'état de certains logements. Donc, il y a beaucoup de travail à faire et les inspecteurs arrivent à peine à fournir à la demande actuellement.

Donc, oui, ça prend plus d'inspecteurs. À savoir comment l'argent va être donné, je ne suis pas certaine, et je ne suis pas certaine non plus comment ça va être alloué. Mais nous, ce qu'on dit, c'est la position du Regroupement. Tout le monde est assez inquiet à savoir s'il va y avoir du personnel en place pour faire face à la nouvelle demande.

Mr David Johnson : You mentioned that some people—or perhaps some municipalities, I'm not sure—have indicated that there are not the powers or the authority to do the proper inspections today under the existing system.

Have you been able to analyse this particular bill, and is it your opinion that the additional powers that are in this bill will permit a proper level of inspection? I must say that there have been municipalities before us that have indicated that even with the provisions of this bill, they will still not have enough power to do the inspections to ensure proper conditions for tenants.

M^{me} Smith : Je ne suis pas certaine quoi vous répondre là-dessus. Je ne peux pas vous répondre là-dessus, sauf que notre problème à nous c'est que quand on fait appel aux inspecteurs pour certains de nos clients qui sont des locataires, on attend longtemps avant que la visite soit faite. Donc, c'est juste à ce niveau-là qu'on peut vous donner une réponse. À savoir si les pouvoirs sont assez importants dans le projet de loi, je ne crois pas que ce soit une analyse que le Regroupement ait faite.

Mr David Johnson : To shift now to the home care side, perhaps you heard some of the deputations before us who are expressing concern that they need to move certain individuals, individuals who are causing difficulty in the home care, whether it's care for the elderly, whether it's care that involves clients with psychiatric problems or whatever. The Landlord and Tenant Act will present a problem to them, will present a problem to the people they're trying to help and will present a problem to other residents in the facilities.

In view of the fact that we've heard this message over and over again but your message seems to be that the bill should go through in its present form and that there not be exemptions for these kinds of concerns, could you elaborate on that?. Do you understand the problems that some of the other operators have brought to us?

1450

M. Leboeuf : C'est un peu contradictoire dans nos valeurs. Nous travaillons pour les droits, la revendication des droits des locataires. Effectivement, quand on regardait le projet de loi, on s'est posé la question, qu'est-ce qui arrive dans les maisons de soins si un patient devient dangereux ? Dans le mémoire qu'on va envoyer, on souligne le fait qu'il faudrait peut-être qu'il y ait un processus à part, parce que si quelqu'un devient dangereux, un psychopathe qui délire, est-ce qu'on peut attendre six mois avant que quelque chose soit fait ? Non. Ça, c'est une chose qui est évidente.

Mais, par contre, nous, on défend les droits des locataires, et non, on ne veut pas qu'il y ait une jurispru-

dence ou quelque chose qui arrive qui fait que, éventuellement, les maisons de soins pourront décider du jour au lendemain de dire, «On renvoie quelqu'un parce qu'il ne fait plus notre affaire.» Non, c'est toujours une contradiction dans nos valeurs par rapport à notre mission, qui est la défense des locataires.

Effectivement, en écoutant parler tantôt, c'est vraiment une image qui nous est revenue de la discussion qu'on avait eue. On comprend très bien le point de vue des autres services qui disent qu'il faudrait qu'il y ait quelque chose en place. On est d'accord avec ça. Il faut qu'il y ait un système peut-être à part. Quand on dit que le projet de loi doit passer, oui, mais il y a toujours des amendements qui peuvent être apportés à une loi et à des règlements. La suggestion n'est pas de changer le projet de loi mais peut-être de modifier certaines choses. Mais ça va faire partie du mémoire qu'on va envoyer.

M. Winninger : Si je vous ai bien compris, vous avez indiqué qu'il faut avoir des inspecteurs additionnels ?

M. Leboeuf : Oui.

M. Winninger : Il me semble que ce projet de loi va augmenter le pouvoir des inspecteurs. Par exemple, on ne doit pas encore saisir la preuve des infractions. Est-ce qu'il y a ce mot en français, «infractions» ?

M^{me} Smith : C'est la même chose.

M. Winninger : Il me semble que les inspecteurs, avec ce pouvoir additionnel, peuvent faire leur travail plus vite et plus efficacement. Est-ce que vous êtes d'accord ?

M. Leboeuf : Oui, effectivement, on est d'accord avec le fait que d'augmenter leur pouvoir, c'est une bonne chose. C'est le nombre duquel on parle. Avec le projet de loi, si on regarde les nouvelles prévisions, d'avoir des maisons dans les sous-sols, qu'ils soient plus ouverts, les pavillons-jardin, on prévoit qu'il va y avoir une augmentation de logements.

Actuellement, oui, il y a un problème au niveau du pouvoir pour que les inspecteurs puissent intervenir, c'est vrai, mais aussi au niveau de la surcharge de travail quand on pense qu'il y a un inspecteur à Gloucester pour desservir tout l'endroit. Oui, c'est vrai qu'actuellement il n'y a pas beaucoup de logements à Gloucester, mais si ça augmente, il ne pourra pas fournir à la tâche même si son pouvoir est augmenté.

C'est en ce sens où on dit qu'il faudrait peut-être que le gouvernement regarde pour savoir si le nombre d'inspecteurs est suffisant par rapport à la population. Quand des gens ont des abominations dans leur appartement, ce n'est pas dans trois mois qu'il faut intervenir ; c'est tout de suite, maintenant.

Il y a des gens qui nous téléphonent : «Ça fait une semaine qu'on n'a pas de chauffage ; j'ai un petit bébé,» et l'inspecteur ne peut pas s'y rendre. La personne est mal prise, puis nous, il faut qu'on passe un processus aussi. On ne peut pas intervenir. On n'est pas la loi. On est là pour défendre. On peut faire de la médiation ; on peut aider en téléphonant au propriétaire. Mais les inspecteurs sont souvent le dernier recours des locataires. Lorsque c'est un délai qui est trop long par rapport au pouvoir qu'ils ont mais aussi par rapport au nombre de

cas qu'ils ont, on se pose la question, est-ce qu'il faut y avoir un processus mis en place pour répondre aux besoins des locataires au niveau des inspecteurs ?

L'hon M^{me} Gigantes : Brièvement, pour répondre à votre question sur le cas où on partage la cuisine, si je comprends bien, et j'ai consulté les experts du ministère, la question est si le propriétaire est un de ces partageants. Sinon, la législation dit que c'est très clair. Okay ?

La situation d'urgence que vous avez mentionnée est une question de l'application des autres lois comme la Loi sur la santé mentale et l'application, j'espère, de la loi des avocats ; ce n'est pas les avocats. Comment le dire en français ?

The Vice-Chair: Advocacy.

M^{me} Smith : Des défenseurs ?

M. Grandmaître : Des défenseurs.

L'hon M^{me} Gigantes : Les défenseurs. Il faut avoir l'application des autres services et d'autres morceaux de législation pour répondre à une situation d'urgence. Ça permet aussi l'intervention du propriétaire au cas d'urgence. Puis, je pense que c'est nécessaire de penser à tous les morceaux de législation, aux projets de loi qui touchent à une situation comme ça.

Aussi, si nous n'avons pas un marché noir dans la situation des appartements dans les maisons, c'est une situation où la municipalité peut avoir plus d'accès à la taxation parce qu'il y aura des revenus...

M. Grandmaître : Additionnels.

L'hon M^{me} Gigantes : Additionnels. Merci, Bernard. Ça veut dire qu'il y aura une addition à la taxation pour la municipalité où on peut trouver des fonds pour les autres inspecteurs, n'est-ce pas ?

Le Vice-Président : Je m'excuse. Le temps pour le caucus gouvernemental a expiré.

M. Grandmaître : Je suis tout à fait d'accord avec madame la ministre lorsqu'elle dit que les propriétaires qui opèrent présentement d'une façon illégale vont recevoir des argents additionnels. Mais, par contre, il faut réaliser qu'une fois identifiés comme étant illégaux, ces appartements, les unités, et qu'ils seront rendus légaux, une évaluation foncière sera faite de l'édifice et les taxes municipales vont s'élever. Alors, c'est six de l'un et une demi-douzaine de l'autre.

Alors, pour retourner à votre présentation, je crois que la plupart de vos clients, si on peut les appeler vos clients, ce sont des gens de Vanier, de Gloucester et d'Orléans peut-être. La grande majorité, c'est dans Vanier ou Gloucester. Vous avez mentionné dans votre présentation que 55 % des 17 000 appels concernaient le logement ou le manque de logements.

M. Leboeuf : La recherche de logements.

M. Grandmaître : Est-ce que Action-Logement a fait une évaluation du nombre ou a fait un sondage pour identifier le nombre d'unités illégales qui existent présentement ?

M. Leboeuf : Ça ne fait pas partie de notre mandat. Comme on ne travaille pas avec les propriétaires, le seul service qui est offert aux propriétaires, c'est l'affichage des logements. Donc, un propriétaire peut nous téléphoner

ou venir nous voir et nous dire, «Moi, j'ai un appartement ou j'ai une maison à louer», puis on va l'afficher. Mais on ne travaille pas avec les propriétaires.

M. Grandmaître : Vous ne demandez pas au propriétaire qui veut s'enregistrer avec votre groupe si l'unité est légale ou illégale ?

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M. Leboeuf : A priori, je pense qu'on prend pour acquis que s'il vient nous voir pour afficher un logement, c'est que c'est un logement légal. Je pense que faire toutes les démarches pour savoir si —

M. Grandmaître : Non, je comprends.

M. Leboeuf : C'est évident que si on demande au propriétaire, «Est-ce que c'est légal ou illégal ?» il va nous dire, «Notre logement est légal.»

M. Grandmaître : Oui, je comprends.

M. Leboeuf : Les démarches à entreprendre pour savoir s'il est enregistré ou pas, ce serait très long. On n'a pas le personnel en place.

M. Grandmaître : Non, c'est sûr. En plus de ça, je ne veux pas vous donner la responsabilité additionnelle d'identifier ces unités-là, loin de là. Mais, par contre, un bon pourcentage de ces unités-là qui sont situées surtout dans la ville de Vanier sont illégales. Elles étaient illégales il y a 15 ans ou 20 ans, alors elles sont demeurées illégales.

Ma peur est due au fait que le stock, si on peut l'appeler le stock d'habitation, surtout dans Vanier, c'est du vieux stock. C'est du stock qui existe depuis 40, 50, 60, 75 ans. Est-ce que vous pensez que les propriétaires de ces vieilles propriétés-là qui ont besoin d'être rénovées pour être rendues légales, vont dépenser les argents nécessaires ? Est-ce que ça vaut la peine ?

M. Leboeuf : D'après ce que nous avons compris du projet de loi, c'est que maintenant les locataires de ces appartements-là, s'ils déposent une plainte, vont être protégés, ce qui n'était pas fait avant.

M. Grandmaître : On peut les fermer. On peut fermer ces unités-là qui sont illégales.

M. Leboeuf : Mais le locataire va être protégé, ce qui n'était pas fait avant. Un locataire qui portait plainte, c'était, «Ben, ce logement est légal,» puis tout ce qui reste à faire, c'est de sortir, d'accord ?

M. Grandmaître : C'est vrai. Est-ce que la loi va protéger ces locataires-là ?

M. Leboeuf : La loi va mieux protéger ces gens-là. Si la loi met la main sur un logement illégal, j'ose espérer qu'il va y avoir des mesures prises face à ces propriétaires-là pour aider dans la démarche.

M. Grandmaître : Ah, bon, pour aider. C'est ça que je veux sortir de toi.

M. Leboeuf : L'objectif, ce n'est pas de faire mettre en prison. On est au courant qu'il y a des personnes âgées parfois qui sont seules maintenant, qui ont une maison et qui n'ont pas assez d'argent et qui vont ouvrir un petit appartement pour aider à payer. On peut comprendre parfois qu'il y a des choses qui se passent. Ce n'est pas nécessairement de taper sur les gens qui ont des appartements illégaux.

Oui, il y en a, des abuseurs, mais non, il y en a qui ont peut-être juste besoin d'un petit coup de main pour les rendre légaux. Je crois qu'il y a deux poids, deux mesures. Mais notre position face à ça, ce n'est pas notre mandat, les propriétés. Ça appartient au ministère du Logement de décider. Nous, on défend les droits des locataires et on dit que peu importe où tu habites, tu as des droits. Pour les gens qui sont dans des logements illégaux, qui habitent dans un grenier qui n'est pas isolé, avec un petit bébé de trois mois qui est en train de geler, il doit y avoir des choses mises en place pour aider ces gens.

M. Grandmaître : Un programme au niveau provincial pour aider ces gens-là, c'est ça ?

Le Vice-Président : M. Grandmaître, votre temps a malheureusement expiré.

Je vous remercie de nouveau pour votre présentation. Nous attendons votre mémoire que vous allez envoyer à monsieur le greffier. Merci.

ALEX MUNTER

The Vice-Chair: The next presenter is Alex Munter, councillor for the city of Kanata, and I think he has various other previous occupations to his credit.

Mr Alex Munter: My name is Alex Munter. I'm a city councillor in the city of Kanata, representing Katimavik-Hazeldean ward, and I'm here to comment on part IV of the legislation, specifically as it pertains to granny flats and apartments in houses.

I'd like to give you a little bit of background on the city of Kanata, which is a relatively recently incorporated municipality in 1978. Urban development in Kanata only started in the mid-1960s, so our oldest urban housing stock is coming on to 30 years. It's predominantly new housing.

We have quite a serious lack of affordable rental accommodation in our municipality. We have seen the construction of a number of co-op and non-profit housing projects and we have some market rental, but it's hard to find an apartment in the city of Kanata.

Our economic development task force, which was composed primarily of business people in the city of Kanata, reported last year that the lack of affordable housing is in fact an impediment to the continued economic development of Kanata, which is the anchor for the high-technology industry in Ottawa-Carleton: Mitel and Newbridge are headquartered in Kanata. Digital, Bell-Northern Research, Quantum Software all have plants in our city.

Who needs housing in Kanata? It's people, for example, who work on the assembly line at Mitel or Digital and who would like to live in Kanata but can't. We have people who have a change of family circumstance through divorce or other reasons who can no longer afford to live in the home they currently own who would like to remain in Kanata but can't stay, and young people who grew up in Kanata. When I moved out of my parents' home six years ago, I owned a business in Kanata. I wanted to stay in the municipality and I was very lucky to get the last one-bedroom apartment that at the time was vacant. Unfortunately, not much has

changed in six years. The reason I am quite excited about part IV of Bill 120 is that I think it will help free up the market to create some affordable housing in our municipality. It's certainly not a panacea. As we have the Minister of Housing here, we would ask her to look kindly on future applications for co-op and non-profit projects in our municipality. It's part of the solution and it will help with supply.

We've heard a lot in the debate about this piece of legislation, about how people in communities like Kanata are appalled at the prospect of apartments in houses. In late 1990 our municipality conducted a very thorough study for the update of the municipal housing statement. We surveyed all households. We got 3,420 replies out of, at the time, 11,000 households. So that's one in every three households. It's a fairly thick report that deals with a whole range of issues.

On the question of intensification, we asked a number of specific questions. We asked, first of all, would you consider creating a separate apartment in your home? Most people wouldn't: 77% said they're not interested in doing that; 15% said they would consider it. We also asked, would you consider some other form of home sharing: renting a room, room and board? A number of examples along those lines were listed: 10.7% said they would consider home sharing and 76.4% wouldn't.

The key question was the next one, which asked, would you object if your neighbours were to share their home in any of the ways listed above? To that question, 67% said, no, they would not have an objection if their immediate neighbour were to renovate their home and have an apartment in the house or share their home: 23.9% suggested they would have a problem with that.

As a result of that housing statement, the previous city council in the city of Kanata, which I was not a part of, adopted the update on the municipal housing statement, which, in its text, included—and this was adopted by the previous city council—addressing these and other issues, primarily affordability of housing issues.

"It is the policy of the city of Kanata to use its power and authority to ensure the availability of a wide range of housing of various types of construction and tenure. This housing stock shall consist of units which may be owned freehold in condominium or cooperative tenure or which may be rented. Without limiting the generality of the foregoing, this power and authority shall be applied to"—and then a whole list of initiatives that the council adopted in principle. Included in that list is "to amend zoning bylaws to permit accessory dwelling units or other means of intensifying the use of municipal services in the built environment."

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Kanata, when it was created in 1978, was created out of parts of other municipalities: part of the township of Nepean, part of the township of Goulbourn and all of the township of March. Each component part had various different zoning bylaws, and 16 years later, we're still in the process of consolidating it.

As a result of that, in Beaverbrook, which is old Kanata, which is one of the most prestigious parts of our

city, the zoning bylaws currently permit accessory apartments. In other zones in other communities, they're ambiguous, and in a number of zones they're not permitted. We haven't quite got along in terms of the consolidation of all our zoning bylaws. That will take a number of years. Once this bill is passed, that will help speed along at least one element of that consolidation.

There are of course accessory apartments now in the city of Kanata. Not as many perhaps as in other older municipalities, but I believe that as the demographics change—and we see now the construction of new homes in Kanata. The past few years have been primarily smaller homes; the larger homes that were built up until the mid-1980s and through the 1970s, there's not much demand for that type of housing any longer.

I think that the market over time, through this legislation freeing up the ability of the market to change some of that form of housing to provide apartments—certainly anyone who's gone door to door has run across in Kanata in neighbourhoods with larger houses existing apartments in houses. In the discussion of legislation that I was following with the previous deputation, certainly the legal recognition of those apartments will help the municipality in terms of regulating them.

That's basically all I had to say. I'd be happy to answer any questions about this.

Mr Fletcher: Thank you for your presentation. You've probably already answered this in your presentation when you were talking about the respondents to your survey, but do you foresee a big rush from your community to line up for accessory apartments?

Mr Munter: No, and in fact the question that asked that said that only 15% would consider it. I'm certain that every household that will consider it won't necessarily follow through on it. So the notion that neighbourhoods will be drastically, irrevocably and dramatically altered by this legislation is a hard one to imagine.

Mr Fletcher: When people do start coming forward, perhaps the 15% or whatever, do you see spinoffs with the economy—construction, home renovations?

Mr Munter: I think that the increased availability and access to affordable rental accommodation, to me the bottom line, that's what is the benefit of this legislation. That brings with it, of course, on an economic level—you see, the problem we have in our retail sector, for example, is that because there is such a shortage of rental housing in the city of Kanata, the firms that are employed in our retail sector have a hard time finding people who can afford to work for low wages and rent, and there are few places to rent in Kanata.

As a result of that, we have significant leakage out of the municipality in retail dollars, people who again in a different survey—we do a lot of surveys in our municipality—identified that they would like to shop in Kanata but can't. So it's a circle, right? No one element of public policy will solve the problem, but I think this helps.

Mr Martin: I guess it's safe to say that coming from a municipal council context, you're a bit of an anomaly in terms of your support for this.

Mr Munter: That would be safe to say.

Mr Martin: You've presented the basis upon which you have made your decision. What do you think is the basis upon which so many others, who seem to be so fearful of this, have made their decisions?

Mr Munter: I would like to point out that at our council we did have a discussion of this. Our council was very, very careful not to oppose the principle of apartments in houses. That wasn't the issue for the councillors on our council, who were excited about this. The concern that they had was about municipal turf and that the province was overriding, in their view, the municipal jurisdiction, the municipal power to make decisions in its official plan. That's a debatable point.

To me, the overriding provincial interest and the reason that I'm glad that the province is taking the step, it's the availability of affordable housing, affordable rental accommodation. Unfortunately, our municipal council, which in August 1992 said it was going to have a public meeting on this issue still hasn't. The policy of our council—it still stands—is in support of the principle of apartments in houses and I'm sorry that the principle has been lost in a big debate over turf.

Mr Owens: In terms of the municipality, would you see it being helpful with respect to regulation as perhaps establishing a registry so that, if I was a prospective tenant, I could go and check and see how 123 Street in Kanata complies with the bylaws and meets the regulations? Would you see that as being something that municipalities would like to take a look at doing?

Mr Munter: It would certainly be helpful for tenants and there's obviously a cost involved. In this context I think our city, as most other municipalities, would be reluctant to take on that additional type of cost.

Hon Ms Gigantes: As a supplementary to that, it would be the case, would it not, that somebody entering the field of being a landlord of an apartment in a house, under the proposed legislation, would be going and getting a building permit? So that would provide an automatic way for a tenant to check, because there would be a record with the city property branch that a work permit had been sought there.

Mr Munter: That would be correct.

Mr Cordiano: Do you think Bill 120 essentially emasculates municipalities by stripping them of their zoning powers?

Mr Munter: No.

Mr Cordiano: No? Just wondering.

Mr Winninger: Shot down in flames.

Mr Cordiano: That was a tough question.

Mr Munter: You weren't expecting a yes, were you?

Mr Cordiano: I don't know what else I could ask after that. It's kind of hard to follow up on that question.

Mr Grandmaître: Are you speaking for the city of Kanata or you're on your own?

Mr Munter: I believe I'm representing 67% of the people of the city of Kanata. I'm here on my own. The official position of the city of Kanata, if you'd like me to read it, as I said—

Mr Grandmaître: I do have a copy of what the city

of Kanata is for or against. I was talking to your mayor on Friday and she's all for intensification, that it should be done the right way. I can recall back in 1978 when the then mayor of Kanata was in favour of granny flats as long as the proper zoning was there. At that time the city of Kanata was in fact requesting money from the provincial government to upgrade, to improve, to update its official plan. Was this done?

Mr Munter: Actually, the funding for the update of the municipal statement was funded by the previous government through the Ministry of Housing and that was part of that exercise. We did have pilot projects.

Mr Grandmaître: And granny flats and accessory apartments are part of your new zoning bylaw?

Mr Munter: No, they are not. It's part of the exercise of the consolidation of our official plan. This lays out the principles which include granny flats, but our council has not yet adopted changes to its official plan.

Mr Grandmaître: So it was never discussed at planning board or even city council?

Mr Munter: This legislation was discussed and in our capital budget for this year, I believe, there are additional funds to complete the exercise. Consolidation is something that has taken two or three years. It started in 1991, so we're still in that exercise.

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Mr Cordiano: Does the entire council that you are part of support Bill 120? Do you know?

Mr Munter: Our council has been scrupulously careful not to condemn the principle of apartments in houses. The majority of members of our council do not appreciate what they see as an intrusion by the province into municipal planning jurisdiction.

I disagree with them, as do other members of our council.

Mr Cordiano: So they would feel self-conscious if I asked them the same question I asked you?

Mr Munter: I wouldn't presume to speak for other members of our council.

Mrs Marland: You say in your riding some major companies are looking for affordable housing for their employees. Do you really believe those major corporations that you refer to want their employees' affordable housing to be in the form of basement apartments? Is that your vision? How long have you been elected?

Mr Munter: I was elected in November 1991.

Mrs Marland: Right. So you're a young man with a vision for your ward?

Mr Munter: Thank you. That sounds like something I could put on an election leaflet, Mrs Marland.

I'd like to think so. I have a vision for Kanata which includes—and we have tried in the city of Kanata over the past number of years. We talk about planning, about changing the direction of our municipality, about providing different forms of housing, about having a greater base of employment, about changing the nature of our city. Part of that—not the solution to all our housing problems, but part of that—includes apartments in houses.

Mrs Marland: But you've got to have higher goals. Pardon the pun.

Mr Munter: Trust me. I have higher goals than basement apartments.

Mr Mammoliti: Is it degrading, Margaret?

The Vice-Chair: Order.

Mrs Marland: You said you had a survey where—

Mr Mammoliti: I used to live in a basement apartment. She's offending me like you wouldn't believe.

The Vice-Chair: Mrs Marland has the floor, please.

Interjection.

The Vice-Chair: Order, please.

Mrs Marland: I'll answer your question but not on my time, Mr Mammoliti.

You said 15% answered in the affirmative to "Yes, they'd be interested in an additional unit." I probably could bet you \$1,000 that part of that question didn't say that that additional unit would be under the Rent Control Act and therefore if you, as a landlord, absentee or otherwise, in that unit, rent that unit to people on the condition, after you've interviewed them, that you think that they're going to be suitable tenants and one of the things that might be important to you and your family is that that tenant doesn't smoke and when they move in, you discover they do smoke, you can't evict them because they're smokers.

Do you think you would have got 15% affirmative response to renting additional units if the public ever, ever thought that their single unit in their private home would be under the Landlord and Tenant Act and therefore evictions would be very, very difficult to obtain if there was a strong incompatibility with that person living in your own home, sharing it with you?

Mr Munter: I couldn't bet you \$1,000 because they don't pay municipal councillors in Kanata enough to be able to do that, but I can't answer that question. I would expect that somebody who was interested in becoming a landlord would look into the obligations and the requirements that being a landlord entails and, if they were not prepared to take that risk, they wouldn't do it.

If you're suggesting that nowhere close to 15% of people would actually erect or construct apartments in houses, I think you're right. I don't think it would be that high. I think it would be much lower. But over time, I think it would add a few hundred units, 200 or 300 units, and when you consider that's the equivalent of three co-op housing projects or more, that's not bad.

Mr David Johnson: Actually the position of the city of Kanata is quite similar to the position of just about every other municipality. I have yet to hear a municipality that's opposed to intensification; I have yet to hear of a municipality that's opposed to accessory apartments.

As a matter of fact, we've heard municipality after municipality that has accessory apartments in some form or another and just wants to look at the issue with their own control, with municipal control, in light of their own municipal circumstances. Now your personal position is obviously different, but from what I hear Kanata's position is quite identical to the position of just about every other municipality.

I wondered, in terms of the percentage of the popula-

tion of Kanata where accessory apartments would be as of right—and I think you mentioned, was it Beaverbrook?

Mr Munter: Beaverbrook, that's right.

Mr David Johnson: What sort of percentage of those residents who have that provision today legally, as opposed to the whole municipality, what would be that proportion?

Mr Munter: Sorry, how much of Kanata is Beaverbrook? Fifteen per cent.

Mr David Johnson: Oh, is it only Beaverbrook?

Mr Munter: The zoning bylaws for Beaverbrook are the only ones that explicitly permit accessory apartments.

Mr David Johnson: So then in 85% of Kanata, it's not legal to have an accessory apartment.

Mr Munter: No, in about 20% or 25% it's ambiguous—the only word I can use—and in the balance it's prohibited.

Mr David Johnson: The study that you mentioned that is the basis of your personal support for this was done a number of years ago.

Mr Munter: It was done three and a half years ago.

Mr David Johnson: And through that period of time—now the minister seems to think it's quite easy to sort of bring this in and plunk it in place, and I wondered, instead of the ambiguous areas and the areas where it's not legal, why Kanata hadn't just proceeded with that kind of support that you seem to think is out there, or they hadn't just gone ahead and done the whole thing.

Mr Munter: Kanata at the moment has approximately 15 to 20 different zoning bylaws under the official plan, for a city of 45,000 people. That comes from the fact that the municipality is constituted from parts of former municipalities. There is this exercise that has been going on for a number of years and should be wrapped up in the next year to 15 months of consolidating the bylaws. We just haven't got that far. I would anticipate that there would have been a discussion around this issue at that time. I don't know what the outcome would have been.

Mr David Johnson: I guess this raises the issue of what municipalities will be looking at in terms of once Bill 120 goes through. You've given us a little bit of insight into the problems that Kanata has faced in terms of the different bits and pieces. I don't think this is necessarily, although Kanata may be more exaggerated in that degree, having more municipalities that have been brought together—but I suspect that this is going to be a common problem that municipalities are going to face after Bill 120 in terms of making their zoning bylaws comply, in terms of making the official plan comply.

I think what you're telling us is that there's time that's required, there's an expense that's required, there are staff resources that are required. This is a bit of an exercise. Obviously, you personally would like to see this have been completed by now, but your municipality has only been able to do 15% in something like three years. From what you're telling us, it's quite a fair exercise and when you extrapolate that right across the province of Ontario, that's going to be quite a cost.

Mr Munter: The reason it's quite a fair exercise is

that our official plan is much more complicated than just the issue of accessory apartments, right? I mean, it's a frighteningly large document. I think this is a fairly minor and small change which will be easy to accommodate and will not generate a lot of expense, to edit and change the one page of our official plan that will be affected by this.

The Chair: Thank you for taking the time to come down and meet with the committee this afternoon.

1530

DICK STEWART
NICK TUNNAcliffe

The Chair: The next presentation is the regional municipality of Ottawa-Carleton.

Mr Dick Stewart: Thank you, Mr Chairman. My name is Dick Stewart, and I'm the commissioner of the social services department for the region of Ottawa-Carleton. My colleague to my right is Nick Tunnacliffe, who's the commissioner of the planning department for the regional municipality.

I'm going to make some fairly brief comments and then turn the microphone over to Mr Tunnacliffe. I'll preface my comments by saying that my comments reflect the opinion of the social services department of the region. They do not as yet reflect the opinion of the standing committee of council, the social services committee, nor of council. It's our intention to present these issues to our committee for their consideration in the very near future.

I'm going to confine my comments to one aspect of Bill 120, and it is the aspect of the fact that residential care homes will no longer be exempted from the provisions of the Landlord and Tenant Act. It's that single issue that I wish to speak to you about this afternoon.

Before I launch into that in some detail, I wish to say that this region—in fact before this region was a region and when social services were a local municipal responsibility, the city of Ottawa at that time, some 40 years ago, started a process of working with the community in the provision of something called residential care. The city and now the region, through staff resources and other ways in working with the community, have developed a network of service in collaboration with residential care homes. We have a long track record in this business.

Today the social services department at the region provides supports, both financial and personal supports, to 775 residents in some 24 different residential care homes.

Our department is committed to the principles of client self-determination and of client rights. I think that our actions in many areas uphold those principles. We believe, however, that these principles can and should be approached in many ways and in different ways and should take into consideration the special circumstances of vulnerable populations.

Boldly put, we are recommending that the province abandon this proposal to make residential care homes subject to the Landlord and Tenant Act. We believe that this step will erode clients' rights, will reduce the availability of housing to people with special needs, and we propose that you give serious consideration to building on

the model of standards for service and standards for supports that do exist in this community today as a result of the cooperation between the region and various community organizations and the operators of these homes.

Since 1981 our region has been pushing for regulation. We've been advocating for regulation in the rest home business. In the absence of such regulations, in 1986 we introduced a fairly complex, sophisticated contract with our residential care home providers. We've backed that up with currently 13 dedicated staff who are responsible for the placement and the personal supports for those 775 residents that I referred to a few minutes ago.

At the risk of being crude, Mr Chairman, and being somewhat provocative, I would categorize the exemption of care homes from the Landlord and Tenant Act as essentially regulation on the cheap. Mr Lightman in his report talked about a bill of rights and a rest home tribunal and various other recommendations in chapter 9 of his document.

We believe that there is grave difficulty in dealing with this unregulated level of care by regulating only one aspect, and that is, bringing in the provisions of the LTA. We believe, frankly, that a more comprehensive approach must be taken to this. We believe the cornerstone of Dr Lightman's document was chapter 9 and we would want you to turn your attention to that.

We understand that many community groups and organizations and advocacy groups will be supporting Bill 120, the removal of the exemption from the LTA for rest homes, on the basis that it treats everybody under the law fairly and equitably, and that's an admirable principle.

We contend, though, that this amendment, this direction in Bill 120, will actually work in the opposite; it will work to the detriment of residents. We believe that the "hard-to-serve" or "less-desirable" potential residents of residential care facilities, now with a remedy at hand, a legalistic remedy under the LTA for eviction, even with its caveats and protection, will result in rest home operators, not only in Ottawa-Carleton potentially but across the province, proceeding to take those steps. Whereas at this point in time, they cannot do that.

In fact what happens is that the third party in this equation, namely, the social services department of this region with its 13 staff, act as mediators. They act as the buffer, and what we see today is that those hard-to-serve and those less-desirable residents, where we believe and the residents believe that the placement is appropriate, are maintained in those facilities and we can work those issues out. We fear the erosion of the support services with the implementation of the Landlord and Tenant Act.

We also believe that operators, human nature being what it is, looking at the Landlord and Tenant Act and having to respond to that, will be in the future more selective in whom they're willing to accept as residents in their homes. This amendment then will have the result of actually reducing the housing options potentially for the hard-to-serve and the most vulnerable.

In point form, we believe that this will move the residential care facilities closer to boarding homes and

farther away from the facilities that provide long-term care for people with high special needs. If you think for a moment that the residential care homes are not part of the long-term care system, please, Mr Chairman, I'd ask you to think again.

We receive very regularly referrals to our department from the placement coordination services, the body in our community charged with the responsibility of placing people in extended care facilities, nursing homes etc. They are looking to our services through the residential care homes as a component in the continuum of care. That's the role they've played since the 1950s and one they continue to play. If provisions of Bill 120 which affect the LTA are brought in, we fear that role will be reduced.

In summary, we're concerned about this amendment and we believe it's going to have the opposite effect than the intended effect, which is to ensure the rights and privileges of individuals living in these homes.

1540

Mr Nick Tunnacliffe: From the planning perspective, I want to discuss four points where we have some concerns with the proposed legislation.

At the outset, I want to say that the regional municipality of Ottawa-Carleton supports the concept of providing a variety and mix of affordable housing options through accessory apartments and garden suites. We've done this through the development of a regional official plan, which was one of the first in the province to address this matter and was approved in 1992. Several of the area municipalities have now or are now changing their official plans to bring them into conformity with the regional policy.

However, we're opposing the legislation, as it's drafted, for several reasons. The first one is almost a point of principle. We're concerned that the province is using legislation to intervene in what has historically been the purview of the municipalities, and that is the matter of zoning.

It has been accepted practice that the way the province has influenced land use planning policy has been through the development of policy statements and, as recently as last year, the Sewell commission's final report reiterated that view, that the province's role should in fact be to set a broad policy direction through policy statements. We believe that Bill 120 undermines municipal efforts to plan for and develop policies on accessory apartments appropriate to communities by using this mechanism.

One of the problems we've got into here is that the provincial expectation regarding the time frame to implement the 1989 housing policy statement has been unrealistic. It has taken longer than expected for many municipalities to develop their official plan amendments and then to implement that new policy through zoning bylaw changes.

As I referred to earlier, Ottawa-Carleton was first out of the blocks and we did get our plan approved by the minister in July 1992. Five municipalities—that's Ottawa, Vanier, Gloucester, Cumberland and Osgoode—already have their official plan amendments approved. Five are

working on policies. Many of those are adopted before the region for approval, and only one has not yet started work on that. In Ottawa-Carleton we believe the planning process which was set up in 1989 is working quite well.

Our first recommendation to you is that you should really try to create a carrot out of this situation by giving the municipalities more time to implement the policy statement on housing so that you would amend Bill 120 and make it only applicable to those municipalities that haven't adopted acceptable policies on accessory apartments by the end of this year. That would provide some incentive to those municipalities to go through the process they've already started, and it would be a positive thing rather than a negative one.

However, if you are to proceed with Bill 120, we have three concerns with it, as it's drafted at the moment, from a planning perspective.

The first is the accessory nature of the apartment. The terminology used by the province has changed from the 1989 policy statement where you talk about "accessory apartments" to in this bill "two residential units," and we think that reflects a shift in policy which causes us some concern.

The words "two residential units" suggest to us that you are looking for the creation possibly of two equal-sized units or the duplexing of existing houses. The words in the current policy statement "accessory apartment" suggest that the apartment will be truly accessory, ie, smaller than the parent dwelling.

We believe that the community is much more likely to accept accessory apartments when the principal residence is owner-occupied. There's research to show this and we've quoted that in the paper.

We would ask you to modify Bill 120 to recognize the accessory nature of the additional apartment and to permit municipalities to regulate the size of the units so that this could be achieved.

The next area where we have concern relates to the types of units where the policy would be applicable. Bill 120 permits the creation of two residential units in a detached house, a semidetached house and a row house. This means that the potential density increase in row houses could be significant, and it may be that the servicing might be overstretched or things like car parking and amenity space might not be available to the proper standard.

We believe that allowing a second unit as of right in town houses should only be at the discretion of the local municipality, based on some sound planning criteria.

Our recommendation is that row houses be deleted from the legislation and this would allow municipalities to continue to regulate accessory apartments through official plans and zoning bylaws for this type of unit.

Our final concern relates to regulations or rather the lack of them. Bill 120 specifies that regulations may be passed. There's no indication as to what would be in those regulations, and we believe that they too should be subject to consultation and therefore they should be available before the bill is enacted.

We'd both be pleased to answer questions.

Mr Grandmaître: Mr Tunnacliffe, you pointed out that five municipalities have already amended their official plan to reflect your official plan. What will happen to these five municipalities who have spent thousands and thousands of dollars to update their official plan to reflect the regional plan? What will happen to their official plans? They will have to be reamended.

Mr Tunnacliffe: Reamended or the policies overruled by the legislation in so far they may conflict.

Mr Grandmaître: Can you put this by me again?

Mr Tunnacliffe: Yes.

Mr Grandmaître: It could be done through?

Mr Tunnacliffe: The legislation. To take the example of the row houses, if in a municipality they've decided in their wisdom that unless certain car parking or amenity standards were provided, second units wouldn't be allowed in row houses, then the legislation presumably will override those local official plans. That's going to cause confusion. You'll have a local planning document saying one thing and you'll have some legislation saying another, then we have to go through a process to bring them together.

Mr Grandmaître: You're asking the province to regulate the size of these accessory or new units. How would you go about this?

Mr Tunnacliffe: No. What we're asking for is that the municipalities be given the right to regulate the size. So they could in fact allow for an accessory apartment as opposed to the duplexing, ie, the splitting in half, let's say, of a larger house. The second unit would clearly be secondary to the main use and therefore it's not going to impact on the community as much, and we think it will have greater acceptance by the community at large.

Mr Daigeler: Mr Stewart, you're raising some excellent points in a very reasonable and rational manner, and I do hope the government will carefully look at what you're putting forward here.

With regard to the planning dimension of the bill, you, Mr Tunnacliffe, rightly make reference to the regulations that we haven't seen yet. We did get something today and, Mr Chairman, I'd like to ask the Minister of Housing whether what we received today as possible fire regulations would be the extent of the regulations that will accompany this bill, or is there more to come?

1550

Hon Ms Gigantes: The answer is that what you received was a draft and it has been circulated to fire officials at the local level, so there may be changes or there may not.

Mr Daigeler: That I understand, but are there any other kinds of regulations with regard to health or property standards or anything like that, or will the regulations be simply confined to fire regulations?

Hon Ms Gigantes: There have been changes already to the Building Code which I believe you've also received information about, changes that were declared in June 1993. Those affect existing buildings, existing apartments in buildings, and also new apartments.

Mrs Marland: Mr Stewart and Mr Tunnacliffe.

you've brought some very important points forward. Personally, speaking for the PC caucus, we have been gravely concerned about the fact that, in essence, we have two bills in one here anyway.

If we had dealt with Bill 90 in the original on its own, it is a very significant piece of legislation, but now we have this rest and retirement homes added, which is also very significant legislation. I think the areas you've identified are exactly the areas that we're concerned about, the fact that you don't by regulating one aspect of an operation necessarily resolve or provide a remedy for what may or may not have been a long-standing problem in a particular operator's situation.

As you say, that wasn't the spirit of the Lightman report either, and it's unfortunate that it has happened this way. Our concern, like you, is that the legislation doesn't do anything to regulate the care. When we're talking particularly about vulnerable people—and we did have a presentation earlier this afternoon from the Canadian Mental Health Association—those are the cases where they are the most vulnerable clients, who are at greatest risk of exploitation.

The bad situations that we've all read about in the media for the most part are not in the major operators of retirement and rest homes around the province, because that's not the business they're in. As somebody said, it's competitive enough and there's a high-enough vacancy that they're just not going to get the clients if they operate in those terrible examples that we've had.

But the point is some of those examples have existed and we're not challenging that, we're just saying that this bill does nothing for them. In fact it may end up being that these people are going to be worse off, which is a horrific thought of how government meddling can get itself into where it shouldn't be in the first place and, second, where there's just no resolution to a problem.

I think it's interesting that you talk about the size of the units. I hadn't thought before about that aspect that you've introduced this afternoon when we did talk under Bill 90 about accessory apartments. The minister keeps talking about how it's just going to be such a perfect world. As far as I'm concerned, it's going to be Alice in Wonderland. Your point about the size of the apartments—the minister really believes that everybody is going to go out and get a building permit to create these units.

That just isn't going to happen. Everybody isn't going to go out and get a building permit, and that's where I think we'll get into a situation where people will continue to have illegal apartments and they may have more than one, they may not understand that, now basement apartments are legal, it means only one. The size factor is a very good point that you bring to us this afternoon.

What I really wanted to ask you—of course I don't agree with basement apartments anyway, but I support you 100%, and that will be an amendment we'll try for. Our caucus will be more than happy to move an amendment that row houses be deleted from the legislation. We will be making all kinds of amendments, not expecting to get support for any of them.

Mr Cooper: If they're good ones, we'll support them.

Mrs Marland: Have you discussed this aspect of row houses with other municipalities? Is that a position that other municipalities—starting with all their concerns, is that their primary concern?

Mr Tunnacliffe: We've discussed it with the municipalities in this region. I haven't discussed it with other municipalities beyond that, but certainly it's one of the concerns we have.

Mrs Marland: So you don't know if other regional municipalities are interested in that?

Mr Tunnacliffe: No. I'm sorry, I can't help you.

Mr Owens: You mentioned the long-term care issues. I think you're absolutely correct that one doesn't look at Bill 120 and see these issues dealt with.

However, I think it's the view of the government, and I'm going to ask whether or not you subscribe to that view, that pieces of legislation like the long-term care reform that's in process with respect to allowing individuals to opt in along the continuum of care until or if they ever need to be put in a more permanent, higher-level care facility, things like the Advocacy Act, if in fact that will protect residents, whether it's in a home for the aged or a basement apartment with a son and daughter-in-law living upstairs or in another situation—looking at some of the issues that are being explored under the mental health reform that our government is engaged in, do you not see these pieces of legislation and reform programs being the correct place for this kind of issue to be addressed rather than amendments to the Landlord and Tenant Act and the Rent Control Act?

Mr Stewart: Certainly I would prefer to see a more comprehensive approach to this, which is what our brief said. I would prefer to see the focus on both improving and ensuring residents' rights and ensuring supports for people to exercise their rights by whatever means.

The point you've made about long-term care reform, I want to respond to that. The fact is that rest homes are seen to be outside the long-term care reform initiative. The point I'm trying to make in my presentation this afternoon is that that's a very false position to take, because we do see the residential care system as a continuum of care.

In this region—it may be somewhat different than it is in other regions in Ontario—but there is a high level of persons with psychiatric illness, psychogeriatrics and indeed the frail elderly residing in those residential care facilities. I support initiatives that look at a more comprehensive way to ensure the rights of those residents. Protecting one aspect, which is tenancy rights, through the Landlord and Tenant Act is only a small piece.

Mr Owens: It's one issue.

Mr Stewart: Yes, but by itself, without those other issues being done, our contention is that it may indeed erode the current system we have in Ottawa-Carleton, which we're very proud of in terms of the collaboration we have with community organizations and the providers.

Mr Owens: Absolutely. If I can speak for the minister and for the government, it's certainly the view of our government that to deal with things in isolation or as a patchwork is not the way to go, but in terms of weaving

the whole cloth, this is clearly the approach that we've taken. With the cooperation of municipalities and regions like yourselves, we're going to be able to deliver the best kind of policy to areas like Ottawa-Carleton.

The Chair: My apologies to Mr Fletcher and Mr Cooper, who had wanted to intervene. Thank you for appearing today.

The next presentation will come from Diane Holmes, who's a councillor in the city of Ottawa.

Hon Ms Gigantes: She always comes right on time.

The Chair: This is right on time.

Hon Ms Gigantes: I'm a little fast.

Mr Daigeler: Should we recess for five minutes?

The Chair: I would recess the committee for a few minutes, but we're under some very tight time restraints on the room. It would probably be best to sit here for a few minutes and wait and see if she appears.

Mr Daigeler: I'll take a look.

The Chair: Thank you, Mr Daigeler.

The committee recessed from 1603 to 1614.

DIANE HOLMES

The Chair: The committee will reconvene. The last presenter of the day is Diane Holmes, a councillor in the city of Ottawa. Good afternoon. You have until 4:30 to make your presentation.

Mrs Diane Holmes: Thank you very much for holding until I could get here. I apologize for being late.

I wanted to say that I am a very strong supporter of the bill as presented; among other things, a very strong supporter of having more easy access for inspectors, both zoning inspectors and property standards inspectors, to have access to housing.

Just as an example, in one of my residential areas there is a private language school which is a commercial use in a residential area. It has been there for about five years now and the city has refused a zoning application to turn it into a private language school, but we have not been able to get the language school out of the building, so it's still there after five years because we cannot get access to the building. Our zoning inspectors cannot get inside because the owner of the building refuses to allow access and no judge will give a search warrant for the access to that building.

The language school continues there, totally in opposition to the city council's wish to have a residential area without this commercial intrusion, but the community certainly assaults me on the sidewalk whenever they see me to say, "Why is that language school still there?" To try to explain that our own city inspectors can't even have access to the building is very difficult to explain and the community doesn't understand it. They want their residential neighbourhood protected and maintained. They don't want to hear excuses from bureaucracies about not having any enforcement for our zoning bylaws.

The other thing I wanted to talk about was how supportive I am of the apartments-in-houses part of this bill. I represent the downtown ward of Ottawa where 85% tenants are my residents. For most of the older areas of Ottawa, apartments are allowed in houses as part of

the zoning. It is the newer suburban areas of Ottawa where apartments are not allowed in houses at the moment in the zoning bylaws. So we have residential neighbourhoods in those newer more suburban parts of Ottawa where we are closing schools because there are not enough people living in those areas, not enough families living in those areas.

The provincial government happily seems to be building new schools in the outlying suburban areas of Ottawa-Carleton while they sanction closing schools in the downtown areas of Ottawa-Carleton. It sort of boggles the mind. The region continues to put in more sewers, more water, more roads, all happily co-funded by the provincial government. Thank you very much for all your money for urban sprawl while the infrastructure downtown goes to waste and we keep closing schools. Does this make economic sense to anyone? It doesn't make economic sense to me.

I would hope that we will see this bill go through in order to have apartments in houses. I am intrigued that they're called "basement apartments" in many cities. Most of the apartments in my ward in houses are not in the basements. One is on the second floor and one is on the first floor. That is how most of the conversions have happened in my ward. There are many older, bigger houses and most of those houses over time have been converted to one, two and three apartments; usually one on the first floor, one on the second floor and, if there's enough room on the third floor, then the third floor gets an apartment as well.

That certainly has worked extremely well in the older parts of town. It has kept the residential makeup family units; it has allowed us to keep our populations up by being able to convert these buildings to apartments. I would hope that we would look at that as being a situation that all of our neighbourhoods can cope with.

It is the neighbourhoods in the outlying areas that have the wider streets and more area to park in their laneways than the downtown ward that I represent that has narrower streets and few laneways, yet we cope with a denser population and with apartments in houses. I would hope, from an urban sprawl point of view, from an economic investment point of view, from using our infrastructure to its best capacity point of view, that this bill will in fact go through the Legislature.

Thank you again, Mr Chair, for allowing me to speak. I greatly appreciate that.

Mr David Johnson: I assume, councillor, you opposed the city of Ottawa when the vote was taken.

Mrs Holmes: I certainly do and I am on record as opposing that position.

Mr David Johnson: The city of Ottawa's position of course is not the same as your own, but you were unable to sway your—

Mrs Holmes: I was. I was a minority vote, you might say, and realizing that the city was coming to speak to you, I thought you should know that there are some councillors who don't agree with the city position.

Mr David Johnson: We're aware that no matter what the issue there is always somebody on the other side.

One of the points put forward by the city of Ottawa is that they felt a lot more supportive in terms of owner-occupied residences, in terms of the accessory units or basement apartments, that if the owner lived in the property, that would be much more acceptable.

Mrs Holmes: I don't see how you can possibly legislate that.

1620

Mr David Johnson: If it was possible, is that something you could support?

Mrs Holmes: I would not agree with that. I think someone who owns a house should be able to rent it to two units, if they so desire, or live in it with a rental unit, if they so wish. That should be up to the owner of the property.

Mr David Johnson: Another issue that has been raised by a number of municipalities concerns the ability to enforce the standards, whether it's property standards, fire standards, you name it.

Speaking from my own experience of less than a year ago yet, when I was at the municipal level, I know that, at least in the part of the province where I lived, it was very difficult to enforce the property standards, for example. You could knock, but either the tenant, the owner or whoever answered the door could tell you to get lost and you had no right to go in and enforce the standards.

Now it's certainly my view that Bill 120 does improve that marginally, but the municipality still is going to have to show—what's the word?

Mrs Holmes: Cause.

Mr David Johnson: Reasonable cause. My staff, certainly in East York, indicated to me that that was a major stumbling block, that unless that's removed, there's still going to be a problem. I'm wondering what your views on that are.

Mrs Holmes: I would think that's then what comes down in regulations as to what is cause. If cause is an inspector's statement that somebody in the building has complained—either a tenant has complained or a neighbour has complained—that would be certainly sufficient. If it's anything that is more difficult, then I think we are having a problem.

Mr David Johnson: Good, okay. That would certainly be my view on it. I doubt very much that that's what the legislation is going to say, but I think you've expressed that very well.

I guess you haven't seen the draft fire regulations.

Mrs Holmes: No, I haven't.

Mr David Johnson: I suppose they've been circulated around. One of the issues with the fire departments has been the access to basement apartments. There's grave concern, because these basement apartments are a great danger, according to the fire departments that have made deputations to this particular committee. Because they're located underground, the access is difficult, getting people out is difficult, that sort of thing.

The fire departments that appeared before us have strongly recommended, almost insisted, that the entrances

and the exits be of a high calibre. Indeed, the Ottawa fire chief who was here this morning wasn't able to make a deputation but told me he felt that it would not be acceptable to have an exit through another unit; that the two exits must be directly from the basement apartment out. I wondered what your view on that would be.

Mrs Holmes: I assumed that any of this apartments-in-houses was subject to fire code regulations and building code regulations. So I'm expecting a certain height. They're going to have to be a certain height, the fire exits are going to have to be meeting the fire code. I made that assumption. I don't think any city would be interested in going forward—I can't see the provincial government interested in going forward—with legislation that does not meet basic fire code and building code regulations.

Mr Owens: Mr Johnson essentially probed an area that I'm interested in, which is a running discussion that we've had with respect to the power of entry. He's much too shy to tell you that the "Get lost" he heard was when he was canvassing. But the question that I have is in terms of your constituents in your ward under the proposed power of entry and the problem that you mentioned at the beginning of your presentation.

Do you see the as-drafted version as being a fairly significant step in the direction to enable property standards officers to enforce property standards bylaws in the city?

Mrs Holmes: Yes, I think it's going to be very helpful. One of the other problems that is fairly common is that, if there are 15 units in the building and unit 2 complains about a problem like broken windows or no heat or heat loss, at the present time the inspector just goes to apartment 2. Certainly we'd like to have the ability to go to the other 14 and see whether that heat loss is prevalent throughout the whole building, which it might be; or if there's a tenants' association in the building, they would like all of them looked at, but most of them work and there's only one who can allow somebody in the building, but they all want their units to be looked at. That is the kind of access that we want to see coming through this new piece of legislation.

Mr Owens: But not the kind of access that would allow property standards enforcement officers to just walk into units because the grass isn't cut or there's a junk car sitting in the driveway that someone's complained about.

Mrs Holmes: I wouldn't think so.

Mr Owens: Good. Thank you.

Mrs Holmes: There still has to be privacy of the units and there has to be 24-hour notification. The tenant, in my experience, is usually the one who invites the inspector to come in because there's a problem with the unit.

Mr Cordiano: I suppose you believe there's really no role for municipalities to play in determining a zoning question around this accessory apartment's ability to exist as of right. I suppose you agree with that.

Mrs Holmes: I agree.

Mr Cordiano: It's a blanket kind of approach, that there are no questions around density and that parking will now become a problem, that existing infrastructure

will be able to accommodate the influx of additional population in a variety of areas.

I know in my city, in the city of North York, there are real problems with sewage backup, some of the sewage problems that have occurred with flooding etc, basements that have flooded and sewage backing into the basements. It's a very real problem in parts of North York. Obviously this would not take that into account and there would be no consideration for what additional capacity is available to accommodate additional population. You don't see that as a problem in the Ottawa area?

Mrs Holmes: No, we have similar backup sewage problems in some parts of our city. We put money into the capital program and we solved that sewage problem. I don't see why North York wouldn't be doing the same thing.

Mr Cordiano: It's not a problem in your city, but in North York it's a serious problem. To get at it would require some serious expenditures and they haven't really gotten at it in a satisfactory way. In fact some of the construction has accommodated the existing capacity, but not built for additional capacity or not taken into account an additional influx of people. Some of the work that's been done has been to alleviate temporary problems. But you don't foresee that as a problem in Ottawa obviously?

Mrs Holmes: No, I don't and I must say that 60% of the people who live in Ottawa are tenants, but there are many neighbourhoods who think that tenants are second-class citizens. We have many councillors around the city of Ottawa who think that tenants should be separated somehow from home owners, that they're a different class and we shouldn't allow them in certain neighbourhoods.

Mrs Marland: Wow.

Mrs Holmes: I'm talking about some of my fellow councillors, and may I say I do not agree with that philosophy and I don't agree with that's how you should plan your cities.

Mr Mammoliti: Some MPPs think that as well.

Mr Cordiano: I think it's appropriate to point out that perhaps a certain form of housing and a certain type of tenure is no longer possible under this, and I think that's what you're referring to.

Perhaps those people would say that a certain type of tenure, that is, single-family dwelling units, is something they desire in certain communities. We're just saying that shouldn't be an option any longer because, quite frankly, that would no longer be an option after this bill is passed. That's really what we're talking about, that in fact there would not be that option that it would exist anywhere in the province, theoretically, even though as a practical matter it may continue to exist into the future.

Mrs Holmes: I realize that will be possible for all home owners who wish to take this route to have another apartment in their home for rental, for their own financial reasons, for family reasons or for whatever reasons.

Hon Ms Gigantes: But is that really the tenure of the property owner or is it the tenure of the neighbour?

The Chair: Thank you for coming to see us today.

The committee will be considering this bill clause by clause during the week of March 6. Thank you to all the members. I would at this point adjourn till tomorrow morning at 10 o'clock in Toronto.

The committee adjourned at 1630.

Continued from overleaf

STANDING COMMITTEE ON GENERAL GOVERNMENT

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- *Fletcher, Derek (Guelph ND)
- *Johnson, David (Don Mills PC)
- *Mammoliti, George (Yorkview ND)
 - Morrow, Mark (Wentworth East/-Est ND)
 - Sorbara, Gregory S. (York Centre L)
 - Wessenger, Paul (Simcoe Centre ND)
 - White, Drummond (Durham Centre ND)

**In attendance / présents*

Substitutions present/ Membres remplaçants présents:

Cooper, Mike (Kitchener-Wilmot ND) for Mr Dadamo
Cordiano, Joseph (Lawrence L) for Mr Sorbara
Marland, Margaret (Mississauga South/-Sud PC) for Mr Arnott
Martin, Tony (Sault Ste Marie ND) for Mr Wessenger
Owens, Stephen (Scarborough Centre ND) for Mr Morrow
Winninger, David (London South/-Sud ND) for Mr White

Also taking part / Autres participants et participantes:

Gigantes, Hon Evelyn, Minister of Housing

Clerk / Greffier: Carrozza, Franco

Staff / Personnel: Luski, Lorraine, research officer, Legislative Research Service

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Standing committee on general government

Residents' Rights Act, 1993

Comité permanent des affaires gouvernementales

Loi de 1993 modifiant des lois
en ce qui concerne
les immeubles d'habitation

Chair: Michael A. Brown
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STANDING COMMITTEE ON GENERAL GOVERNMENT

Wednesday 26 January 1994

The committee met at 1003 in the Humber Room, Macdonald Block, Toronto.

RESIDENTS' RIGHTS ACT, 1993
LOI DE 1993 MODIFIANT DES LOIS
EN CE QUI CONCERNE
LES IMMEUBLES D'HABITATION

Consideration of Bill 120, An Act to amend certain statutes concerning residential property / Projet de loi 120, Loi modifiant certaines lois en ce qui concerne les immeubles d'habitation.

The Chair (Mr Michael A. Brown): The business of the committee this morning is to deal with Bill 120, An Act to amend certain statutes concerning residential property. We are continuing a process of public hearings which began last week and will continue for the next couple of weeks.

CHILDREN'S AID SOCIETY OF
METROPOLITAN TORONTO

The Chair: Our first presentation this morning is from the Children's Aid Society of Metropolitan Toronto. Good morning. The committee has allocated you one half-hour for your presentation. You may use all of it for your presentation or reserve some of it for questions and answers. If you would like to introduce yourselves for the purposes of Hansard, that would be appreciated.

Ms Joyce Barretto: Good morning. My name is Joyce Barretto. I'm vice-president of the board of the Children's Aid Society of Metropolitan Toronto. In my other life, I'm vice-president of Oswenda Investment. We are private sector landlords who deal with both commercial and residential real estate.

On my right is Ann Fitzpatrick. She is the housing advocate for the society who will be presenting the children's aid position on Bill 120.

Our presentation is approximately 15 minutes long and we'll then open the floor for questions. Appended to this presentation is some additional information on Metro CAS and housing statistics across Metro and Ontario.

The comments from the Metro children's aid society will be limited to the apartments-in-houses portion of the proposed legislation.

We are here to express strong support for Bill 120. The bill will provide additional protection and options for our clients who have a tremendous need for affordable and safe housing.

I will now go into a little bit about the mandate of CAS. Metro CAS is the largest child welfare organization in North America and throughout its 100-year existence has been responsible for the protection of children under the age of 16 within the mandate of the Child and Family Services Act. The society also provides a high quality of substitute care for children and develops child abuse prevention programs.

Our number one mission after the protection of

children is to support families so that children can stay in their own homes wherever possible. Metro CAS has realized through our years of experience in working with children and families that providing counselling and support cannot be successful if some of the families' root problems are not addressed. For some families, their income and housing problems can multiply the level of stress and have an adverse impact on their ability to care for their children.

Metro CAS has historically advocated for housing solutions in keeping with our policy that "Everyone has a right to adequate, affordable housing, and furthermore it is the role of all levels of government to set and enforce policies in such a way to ensure that this occurs."

One example of this advocacy has been our instrumental involvement in the setup of the Inclusive Neighbourhoods Campaign, known as INC, which has been promoting zoning that allows apartments in houses. INC is supported by many groups across Ontario, including child and family services organizations such as Halton CAS, Catholic CAS, the CAS of Timiskaming, Jewish Family and Child Services, Native Child and Family Services, Family Service Association of Metro Toronto, Children and Youth Services of Brantford and Women's Place Kenora. This is only one of the many groups that are involved in this organization.

A quick profile now on Metro CAS and the families, children and youth with whom we work.

In 1992, we worked with over 9,000 families and served over 19,000 children who live in Toronto, Etobicoke, East York, city of Toronto, Scarborough and North York. Our clients include many single mothers, children in care, low-income families and youth, many youth on independent-life programs. These families, children and youth are among some of the most disadvantaged residents in Ontario.

An estimate of 83% of the families involved in the child welfare system live below the poverty line. Some 49% of these were single-parent families, mainly female-headed. This is very large compared with only 12% in Ontario and about 25% in Metro at large. About 54% of our clients were on some form of social assistance, while only 37% live in rent-geared-to-income housing. One out of three families are new Canadians from diverse racial and ethnic groups, many who are refugees and many who have unique housing needs.

Three hundred wards of Metro CAS were youth aged 16 and over who were living independently in the community. They receive an independent living allowance that is a paltry \$567 a month, which equates to \$6,804 a year. This is well below the poverty line for a single person, which is \$14,951.

Finding decent and affordable housing is frustrating and very difficult for our clients. Families involved with the Metro CAS find that housing costs can consume up

to 70% of their income. They often have to use food banks just to get by. Other families find housing that's more affordable but is unsafe and below generally accepted standards. Families sometimes find housing in high-rise buildings that is not their first choice, since they would prefer to live in a residential area with a backyard.

The Ontario Human Rights Code was amended in 1986 to guarantee the rights of families with children to rent apartments, and banned adults-only accommodation. However, many of our families continue to report discriminatory practices where landlords refuse to rent to them because they have children. In other situations, families and youth report they are turned down from rental accommodation because they are on social assistance or because they are told that their income is too low to rent a particular apartment.

Many teen mothers and small families that we work with turn to apartments in houses as an important housing option they can access. Some of these apartments seem to be very safe and affordable, but they are illegal because of restrictive zoning in all municipalities except the city of Toronto.

Some landlords are excellent and fair. Other landlords have been reported to use the illegal status of housing to intimidate tenants into silence. As a result, tenants live in fear that if they complain about the safety of their housing, they may face eviction. Some landlords violate tenants' privacy and enter the apartment with no notice or consent. In other cases, the housing is not meeting current safety or building standards. A few examples of the problems that we have heard about are things such as furnaces that are exposed, cracked windows, inadequate heating, no smoke alarms, unsafe railings on stairways, blocked exits, loose wiring and broken appliances.

The illegal designation of these apartments means that it is impossible for our clients to exercise their right to report offences without the very real risk of losing their accommodation. In too many situations families and their children are left with two unsatisfactory options: they put up with the low-standard housing or they have to leave.

The legalization of apartments in houses will be a step forward in providing another safe and generally affordable option for the families we work with and for youth in CAS care who are moving towards independence.

1010

Ms Ann Fitzpatrick: I'd now like to outline some of the social and economic impacts of the housing problems that our clients face.

We believe that the failure of all levels of government to address housing solutions for families and youth wards leaving care has adverse impacts on the lives of children in Metro and in Ontario. The costs are twofold: Part of the cost is difficult to measure as it reflects the emotional wellbeing and stability of children and their parents in how well they can cope with inadequate housing. Some are coping remarkably well; for others the result is child abuse and neglect.

The other costs are more tangible and can be measured in terms of dollar expenses paid by taxpayers to the

services that become very heavily utilized by families under stress. These services include counselling, special education, hospitals, treatment centres and child welfare services like the CAS.

The Metro CAS recently completed a study with the University of Toronto that looked at the impact of housing problems on children coming into care in 1992. This study validated that there is a link between housing and admissions to care. Housing problems were a factor in one out of five of all child admissions to care, or 18.4% of child admissions. In 1992 figures, this meant that housing was a factor in the admissions of up to 239 children. These situations involved very serious child welfare concerns as well, such as abandonment, physical abuse and neglect.

We need to be very concerned about the kinds of impacts that housing problems may have on child abuse, neglect and admissions to our care. Our findings have duplicated the kinds of findings in American child welfare literature and symposiums, including the Child Welfare League of America.

Social research has documented the devastating impacts on children when separated from their natural parents, even when it's necessary due to abuse and neglect. Separations that are in part a result of housing problems and stresses should be prevented wherever possible. Removing a child from his or her natural parents requires intensive counselling and many supports.

To add to this emotional cost, there is a huge financial cost for residential care. For each child who comes into care, the cost to the Metro CAS and taxpayers is about \$1,500 per month. The total costs for all the children affected could be up to \$5 million when the average length of time in care is taken into consideration. It is difficult to fully assess and estimate the long-term emotional and financial costs of family breakdown due to housing problems. It's also difficult to assess the long-term costs of youth who are leaving the care of the Metro CAS, who frequently become very alienated within their communities when they struggle to access basic supports such as housing.

If we and our politicians ignore the impacts, it can be devastating for the children, the families, the youth and our communities. Homelessness, transient housing, overcrowding, expensive housing and unsafe conditions are facts of life for too many of our clients. Their needs and issues must be a priority.

I'd now like to outline why we are supportive of legalizing apartments in houses.

We see Bill 120 as one small step to assist families and youth with expanded housing options that are safe and relatively affordable. The Metro CAS has been advocating over the last three years to legalize these units in the Metro area and in Ontario. An estimated 50,000 of these apartments exist across Metro.

The CAS has written letters to all of the mayors across Metro and we've taken part in deputations and briefs to the councils in Scarborough, East York, North York and Toronto to support this direction. Our board of directors has also written to the Premier of Ontario and the

Minister of Housing to support legalizing this form of housing and to support Bill 90 in principle, and now Bill 120 within some standards and regulations. The Metro CAS board has also sent letters to all of the presidents of the children's aid societies across the province and this issue is being considered by several of their boards.

There are a number of advantages to Bill 120 that we recognize:

(1) Most tenants do not know that these apartments are not legal when they first rent an apartment. We all know that apartments in houses are out in the open in many respects and the zoning restrictions are not public knowledge. We know that in Metro Toronto and many other communities they're advertised blatantly in newspapers, in real estate magazines and on signs in windows.

This proposed change to the Planning Act will be a step forward in recognizing these thousands of rental units in houses and thereby recognizing the rights of the many tenant households affected. This form of rental housing is part of our available housing stock, and as such it should be legalized and regulated.

(2) As Joyce mentioned, apartments in houses that are safe can provide another option for families and young people living independently. The option for tenants to live in a residential area, in a house with a backyard, is very desirable for many people and may be beneficial for them in comparison to high-rise living.

(3) Tenants who live in these apartments must be entitled to the fire safety and property standards protection and enforcement that other tenants can expect; similarly, they should be entitled to the same tenant rights as other tenants under all tenant legislation.

(4) We believe zoning and local bylaws that restrict apartments in houses have the effect of discriminating against some of the most disadvantaged groups in our communities, including many of the families, children and youth with whom the CAS works. Bill 120 is a first step to remedy some of these issues.

I'd like to conclude by saying that we have an opportunity this year; it is the United Nations International Year of the Family. Governments at all levels should be ensuring that the basic needs of all families be addressed, including their housing needs. Canada is also a signatory to the UN Convention of the Child, which also commits governments to support the basic needs of all children, including housing, and to support their families so that children can remain at home with their parents wherever possible.

Planning for accessible, affordable and safe housing solutions for all citizens in our communities must be a priority. Investment of time and resources to develop effective policy and program solutions to the housing needs of some of the most vulnerable children, youth and families in Ontario will save money and resources in the long term.

The policy of legalizing apartments in houses is just one small reform that will help many of your most disadvantaged constituents. In our view, legalizing apartments should not limit other forms of municipal and provincial planning to ensure the right to housing for all

and for a range of permanent housing solutions for low-income families, children and youth.

Mr Bernard Grandmaître (Ottawa East): Thank you for your presentation. I think it highlights not only the housing problem in Ontario but the good work that you people have been doing. A very good brief.

Let's talk about three things. Let's talk about zoning; let's talk about safety; safety, fire code, respecting zoning bylaws and property standards bylaws, all of these great things.

My problem with this bill is not because we're providing, or we will be providing, basement apartments. My concern is, how safe are these apartments? We've recognized that we have more than 50,000 of these illegal apartments, if I'm not mistaken, in the Metro area. My biggest concern is that out of the 50,000 illegal apartments in Metro, maybe only 10% or 15% or 20% will eventually become legal apartments, for the simple reason that most of these apartments were built without a building permit, not only because of the restriction of the zoning bylaw but because these people took shortcuts to provide basement apartments.

My concern is, once we identify them, if these people are willing to come forward and say, "Look, I don't mind a building inspector visiting my place and leaving me with a number of work orders to render my apartment or apartments legal." Will this bill resolve all of these problems? I say no, for the simple reason that, again, it's not only housing, it's the affordability of housing your clients. I think that's very, very important. I don't think that limiting or making zoning bylaws in this province will accommodate these people.

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Mr Gary Wilson (Kingston and The Islands): Have you got a question there?

Mr Grandmaître: Yes, I do have a question. You'll have your turn.

Mr Gary Wilson: I know. It's also so interesting.

Mr Grandmaître: I'm glad you find it interesting. That's about the only thing—

The Chair: Perhaps you could direct your statements to the Chair.

Mr Grandmaître: Thank you, Mr Chair. Maybe you should talk about who's interrupting.

Talk to me about the safety of these apartments, or the lack of safety of these apartments, to accommodate your clients.

Ms Fitzpatrick: I'm the housing advocate for our agency so I deal with the social workers who come to me with questions around the housing issue and ask for assistance in helping clients find housing.

What I've been finding from our experience is that some of these units, from the social worker's perspective, are quite safe, but there are concerns around the relationship sometimes between the landlord and the tenant. That's where they would like the Landlord and Tenant Act protections that they're not able to access.

You're quite right, some of these units, by our social workers' perspectives—they are certainly not building

inspectors—they would have some safety concerns, as we mentioned. In some cases they're minor kinds of issues that are identified that would not cost a lot of money, in our view, to bring up to standard. In other cases they may be more major.

Certainly there will be some fallout from this bill. Perhaps some of the more substandard housing units will be closed. We think that is probably a good thing for the safety of children and families. We believe that there would be also other home owners who would want to follow procedures and put in safe units for children and family.

In addition, it provides for our clients, where there are minor problems, the ability to get some enforcement. We have tenants who live in high-rise buildings as well where there are some issues with balconies and there are other safety issues in high-rise buildings. Those create some safety concerns for us as well, but we certainly wouldn't be saying, "No more high-rise buildings in the Metro area." What we'd be saying is, "Let's give those tenants the right to get their property standards enforced." That is what we're looking for in legalizing apartments in houses: enforcement.

Mr David Johnson (Don Mills): I'm perhaps getting back to the same question where you've indicated that many tenants are concerned about raising concerns with their apartments because of what the landlord will say.

From my past experience as mayor of a municipality, we've certainly had complaints from tenants with regard to their accommodations. In a situation like that the municipality goes back, talks to the landlord and inspects etc and finds that most landlords are very responsive. Indeed, the problem perhaps wasn't communicated properly, or who knows what, but at any rate it gets resolved.

I wonder if you have any kind of statistics, since you're sort of in the middle of this, with regard to the number of people who have raised this concern that you've mentioned in your brief. They're in illegal apartments and they've come to you and they're afraid to complain to their municipality about conditions.

Ms Fitzpatrick: We don't have exact statistics on the number of families this is affecting in Metro. But I know from doing workshops with staff, from inquiries from a lot of our pregnancy and aftercare workers and our social workers, that this is very much a form of housing many of our families are using in the various municipalities.

These are the issues that they phone me about, whether their tenants can phone legal clinics. I always advise them, by all means, to phone a legal clinic when they're in doubt. Legal clinics give them the advice that they will proceed and assist them as though they're covered by the Landlord and Tenant Act and hope that the courts find it such. But the findings have been very inconsistent.

For a lot of our tenants what ends up happening is what Joyce said. They end up leaving and they go to a shelter or they get doubled up with another family and what ends up happening with those units is they just get to another unwitting tenant who then goes through the same pattern.

Mr David Johnson: There's certainly anecdotal evidence, but sometimes when you get to the bottom of anecdotal evidence, you don't know whether that means there are hundreds of people or thousands of people who are afraid to complain or if it's just a few people. We're hearing about them, so I just wondered.

Ms Fitzpatrick: We have workers who are visiting clients in these homes and they describe the situations to me and that's anecdotal. It also came out in the study that we did with social workers. The issue of illegal basement apartments came up in that study as well and in some of the case stories that were shared with me.

Mr David Johnson: Many municipalities are dealing with this in different circumstance and we just heard in Ottawa, I think, five of the municipalities indeed have passed some sort of legislation permitting basement apartments under certain circumstances, that sort of thing. Sometimes it seems like it's all or nothing. Either you have to have basement apartments everywhere or else you're a criminal. Which one? I don't know, but that's the kind of the way this is sort of portrayed.

I wondered if you had the opportunity to see what some of the municipalities are doing and if you felt there was some sort of compromise here where municipalities could retain some of the control but still meet the needs of the people.

Ms Fitzpatrick: As Joyce mentioned, we're members of the Inclusive Neighbourhoods Campaign, and I've certainly been to meetings in Barrie and some other communities. We've been up to Sudbury and heard what some municipalities have said. I've read some of the local bylaws. I know Etobicoke was looking at an owner-occupied provision. The children's aid has not gotten into the bill in that kind of depth. I believe our position is that we support them as of right across all the municipalities as long as safety and building standards are established.

Mr Gary Wilson: I want briefly to apologize to Mr Grandmaitre, but as you know with this Chair who's so quick to cut us off, we have to allow the presenters some time to respond.

Mr Grandmaitre: Have you got a question?

The Chair: Shoot the messenger.

Mr Gary Wilson: You were saying that the owner occupancy isn't an issue you've really considered and it's not something you'd like to comment on.

I want to commend you for all the work you've done in support of this going around to area councils as well as the material you brought in in support of your document, *Child Poverty in Metropolitan Toronto*, Report Card 1993. I find that very effective and I hope other children's aid societies are copying that approach because, as you point out in your presentation, it's so important to make sure we do everything we can to make sure that children in need, throughout our society, are helped. If apartments in houses can do that, then we should be supporting it.

I will turn it over to my colleagues for their questions.

Mr Grandmaitre: Their questions? That was a great speech.

Mr Gary Wilson: Short, short.

Mr George Mammoliti (Yorkview): Welcome. In Yorkview 65% of the social assistance recipients are single parents; that's 65%, actually, of people who live in the current public housing are single parents.

We've heard from a number of deputants in terms of style of living and how accessory apartments, I've heard, are a much better way of living than some of the other and current accommodations that might exist in Metro in that there's a sense of responsibility in shovelling the snow and cutting the grass. Tenants tend to pick up that shovel and cut the grass frequently, whereas in other styles and forms of living, it doesn't happen.

Could you give me an indication of the difference, and I think there's a positive difference, between some of the current accommodation that exists in Metro for some of these single parents, and accessory apartments, the positive side to accessory apartments? If there's any negative side to that I'd like that as well.

1030

Ms Barretto: I guess the best thing about accessory apartments is that it gives people a choice. They aren't obligated to live in MTHA housing, which would be a 20-storey high-rise where they've got two- and three-year-olds who have no place to play except the hallways or in very small, confined living areas. If they have a choice they have a backyard and they're much more accessible to safe neighbourhoods and playgrounds. Right now they're playing in a concrete jungle. They have no options. The local schools are often farther away. This way they have a right to find where they want to live.

Mr Mammoliti: What does that do for the upbringing of the child?

Ms Barretto: It's immeasurably more successful. If children feel they're in a safe environment, if they feel they're somewhere where they're going to be cared for, where they can enjoy walking down the street safely, where they go and mix with their friends in a much better atmosphere once again than playing in hallways, it's just going to make a better stability for those children, and also for those parents to know that when they send their children out to play, there's a backyard to play in that's more than likely fenced, that there's grass—

Mr Mammoliti: Moral values.

Ms Barretto: Yes, everything is going to be affected. Where you live and where you sleep at night and where you do your homework are affected. If you have a noisy neighbourhood and a noisy building that you live in versus a nice, quiet stable home, it affects your day-to-day living.

The Chair: Thank you, Mr Mammoliti. My apologies to those other members who have indicated interest. The time unfortunately has expired. Thank you for your presentation. The committee will be reviewing this bill clause by clause during the week of March 6.

UNITED TENANTS OF ONTARIO

Ms Barbara Hurd: My name is Barbara Hurd. I am the coordinator of United Tenants of Ontario. Can everybody hear me? I'm told I speak too low.

The Chair: No, that's fine.

Ms Sharon Murdock (Sudbury): We have speakers in front of us.

Ms Hurd: Okay. Good morning, members of the standing committee on general government. I wanted to start by introducing something about United Tenants of Ontario. We were founded in 1989 as a non-profit democratic organization with the goal of safe, affordable housing for Ontario tenants. Our members are from all parts of Ontario, from Kenora to Goderich to Hawkesbury. We live in private rental, basement apartments, rooming houses, on the streets and in non-profit, public and cooperative housing. Our members are individual tenants, tenant associations and federations and many other supportive groups and individuals.

At each of our annual meetings over the past five years we have educated tenants in housing law and issues, developed the province-wide tenant movement and elected our 21-member provincial council. At our last annual meeting, UTOO members dealt with some important issues.

We took our concerns about basement and illegal units to the steps of London city hall, urging that council to support the legislation legalizing the units and protecting tenants. When the Minister of Housing addressed us at our conference, we questioned her closely about the commitment of her government on this very urgent concern of ours. We have supported coverage by the Landlord and Tenant Act and the Rent Control Act, the demands of tenants living in housing that provides or purports to provide special care. We are glad to have an opportunity now to speak to you about these issues.

Of great assistance in our work on these issues were Persons United for Self-Help in Ontario, which is known as PUSH; the Inclusive Neighbourhoods Campaign you've just heard from, INC; the Advocacy Centre for the Handicapped; the Coalition for the Protection of Roomers and Boarders; and the Federation of Metro Tenants' Associations.

These groups are vitally interested in the proposed legislation before you and have done a great deal of research and consultation on the issues contained therein. I believe that if you give serious consideration to their submissions you will learn, as we have, and will be able to put the finishing touches on this law.

Each year, we have organized campaigns on issues of concern to tenants. Last year the issue was tenants and taxes, and meetings were held in Sudbury, Windsor, London, Ottawa, Toronto and Hamilton, with the help of local tenant organizations.

Some of the members of this committee might be surprised to know the extent to which tenants are taxed on their homes. Tenants living in buildings of seven units or more can pay taxes that approximate the value of three to four months' rent per year which, if you were paying \$900 a month, is \$2,700 to \$3,600 per year.

According to the Ontario Fair Tax Commission in its report *Fair Taxation in a Changing World: "Highlights,"* on page 93: "Tenants are overtaxed compared with single-family home owners. In most municipalities,

multiple-unit residential properties are assessed at between two and three times the rate of single-family homes."

I feel that it is necessary to remind members of all parties in this Legislature that they should pass Bill 120, not only because all tenants deserve coverage of the Landlord and Tenant Act and the Rent Control Act and not only because it is the right thing to do, but also because they are taxpayers and should be recognized as such. This fact seems to escape most politicians and UTOO feels that it needs restating.

There is this persistent myth that tenants are not taxpayers and not contributors to society. Tenants across this province could legitimately claim they suffer from taxation without representation. Most tenants don't receive tax information, garbage and recycling services, and very little in the way of enforcement of property standards in their buildings. It should not come as a surprise that tenants now turn to the provincial government to take the steps the municipalities refuse to take and end exclusionary zoning.

I want to now address, in a little bit more detail, the question of illegal or basement units, the portions of this bill that deal with that. The concern is that it's unfair to municipal councils and people living in single-family dwelling zones. I think members of the committee would agree that it's unfair to accept taxes from people—and I'm talking about the people who live in basement apartments—who are least able to afford them and not heed their calls for safety and security in their homes. Is it fair to maintain the status quo where tenants cannot challenge their rents or are forced to live in substandard housing that could threaten their families' lives?

Where the municipalities refused to recognize that people were denied basic rights under the current laws, it is only reasonable that tenants looked to the province for help and reasonable that the province felt compelled to act.

On the other side of the equation, what is the harm that will be wrought by the introduction of the legislation? The Conservatives have stated that all single-family dwellings in the province will immediately become two units. This appears to be a contradiction: If so many home owners are opposed to this law, as is claimed, how many conversions will actually take place?

Those opposed to the law say it will destroy neighbourhoods. There are estimated to be 100,000 units across Ontario neighbourhoods today and we have not heard stories of illegal units being responsible for their social disintegration.

Quite the contrary, the point of the legislation is to improve and make safe second units, which can only mean an improvement in the quality of life in the neighbourhood as a whole. Further, intensifying the use of land and buildings supports efficient use of resources. Supporting extended families by allowing garden suites and keeping elderly relatives out of institutions can only be a positive social development.

Another concern we have heard is that there was not enough consultation with municipalities. The Liberal

government in 1989 produced a policy statement on basement apartments, among other things, and later prohibited municipal bylaws that distinguished single-family households and households of unrelated people. When it assumed the government, the NDP's throne speech made reference to it.

The introduction of Bill 90 in fall 1992 should have indicated which way the wind was blowing. I think there was time enough to know what was going on. It looks from here like the municipalities wanted this whole issue to go away.

Single-family zoning is discriminatory. It means that certain neighbourhoods are like private clubs: If you have money enough to purchase a house there, you are welcome; otherwise you can't come in. Public dollars and policy cannot be allowed to cater to private interests and neglect the legitimate rights of others.

Though we wish to see speedy passage of this long-awaited bill, we want to sound a note of caution about increasing the powers of property standards inspectors. Given the municipal opposition to second units in houses, our fear, along with others, is that inspectors will be looking for justification to close units down instead of requiring repairs or otherwise remedying the situation.

Please consider that these apartments are the homes of people with limited resources. Being forced to move is stressful, costly and disruptive to the employment, education and social aspects of people's lives. The Ministry of Housing should give serious consideration as to a means of preventing this, because once the process is under way, it would be extremely hard for a tenant to stop it.

This desire for increased powers of intervention strikes us as highly ironic since municipalities have told tenants in legal units that they cannot send inspectors to look at the deficiencies in their buildings because there are not enough inspectors or they are too busy.

We do not believe that power of entry is the problem. Legalization of the units should increase voluntary access by property and fire inspectors if it means that tenants are not going to get evicted if they let them in.

We wish to support the position of the Federation of Metro Tenants' Associations that a public education campaign be conducted to let tenants and landlords know about this legislation and their rights and obligations under it. Very often people, when contemplating becoming small landlords, tend to think of the extra income and may overlook the work and responsibility that goes with it. Tenants with new rights need information on what they are and how to enforce them.

To conclude our remarks on this aspect of the bill, we wish to thank the Minister of Housing for her hard work and recognition of this important issue for tenants. As consumers, taxpayers, workers, parents, seniors, students and new Canadians, tenants demand it and deserve it.

I wanted to direct some remarks towards the other aspect of the bill, which is the extension of tenant rights to tenants in care homes. United Tenants of Ontario is in full support of the extension of coverage by the Landlord and Tenant Act and the Rental Control Act to people who

live in rooming houses and non-profit projects that provide or purport to provide care services. It is very important to us that these people are given that protection.

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Other than to make the point that where meals are provided, they should be covered by the Rent Control Act in these places, we feel it is time to act and give the protection that the Landlord and Tenant Act and the Rent Control Act afford. ARCH, the Coalition for the Protection of Roomers and Boarders, PUSH and the Ontario Coalition of Senior Citizens' Organizations have raised concerns about some aspects of these particular provisions. We ask that you make use of their expertise to ensure that the legislation works.

In our brief to you we have included six resolutions passed by our members at our annual meetings on the subject of non-profits and vulnerable tenants. I won't read them here, but ask that you review them when you can. They're attached.

UTOO very much supports non-profit housing but this support is qualified by the recognition that tenants with special needs must have at the minimum the protection of the Landlord and Tenant Act and the Rent Control Act to challenge the exclusive and unilateral power of their landlords. Why should having special needs mean you have no recourse to the law?

This is the opportunity for provincial decision-makers to move our society forward, to be able to call ourselves progressive. Let us show the world we can do the right thing for all of our citizens and pass Bill 120 into law. Thank you for your time and attention.

Mr Ted Arnott (Wellington): Thank you, Ms Hurd, for your presentation. It's clear to see that this bill is of great interest to tenant groups and I think your presentation's been very helpful to me in terms of better understanding where you're coming from.

I have a couple of questions with respect to the text of your presentation. The first one was the quote on the amount of property tax paid by tenants and the numbers you gave. Did those numbers come out of the Fair Tax Commission report, or where did those originate?

Ms Hurd: Yes. The research that was done by our members when we were preparing materials for our campaign on tenants and taxes did look to the Fair Tax Commission materials. We had a fact sheet and I thought that I had a lot of extra copies; I was going to bring them. But I can still provide that material. The quote is directly from the Fair Tax Commission report. Those figures are from our research based on materials that were presented or provided by the Fair Tax Commission.

Mr Arnott: I've never disputed that a tenant would pay a portion of their rent going directly towards the property tax that their landlord in turn pays. Certainly, if property taxes are increasing, it's likely that rental rates are going to increase in a free market too.

Ms Hurd: It could do that, yes.

Mr Arnott: The second point, you mentioned that the Conservatives have stated that all single-family dwellings are likely to become two units. I don't think, to be fair,

we've said that. I think the potential though exists, in my view, for a significant increase in the numbers of basement apartments, if you want to call them apartments in houses, in a totally unregulated environment, such that there will be really an untold additional demand on local services.

Ms Hurd: I think that there have been some studies done that show that household size has decreased. I think also that over the years, especially if you're talking about the suburbs, household size, lot sizes, have increased. I think those are the things that put pressure on services: more roads, more pipes, more wire, more everything is required to service the buildings that exist there now. I think if there are two families sharing a home, especially the size of many of the places in the suburbs of Metro, if you're talking about Metro, there could be a lot of sharing of resources.

Mr Arnott: Where I come from, rural Ontario, Wellington county, some of the small towns have tried very assiduously to plan their growth and they're telling me that they've got a certain amount of sewage capacity there and they're just trying to figure out what the impact will be if there are a number of additional basement apartments on the sewage capacity that they've got. It's difficult for them to plan that without having any estimate, and the government hasn't provided one, of what the increase may be as a result of the basement apartments in terms of the demand on that particular hard service.

Ms Hurd: I would think, given that there will be regulation and requirements of building permits and standards to be met before a unit can join the world of apartment units, that this would sort of mitigate against a huge rush of units. I don't know. Do municipalities know how many developers are coming to their neighbourhoods and how many houses they're going to build at any given time?

Mr Arnott: They try to plan it, yes; in our riding they certainly do. It's difficult to know who's going to be coming six months down the road, but at least you can say no if you don't have sewage capacity and that sort of thing.

Ms Hurd: I would think if they have a plan for sewage capacity of fairly large subdivisions, an additional couple of units in a neighbourhood, I don't think, is going to make a huge difference. I don't think it's going to be the pressure that people expect.

Mr Arnott: There's probably a larger issue here, and that is the responsibility of municipalities. They have been given the responsibility for local planning, and I see this bill as a direct contradiction to that historic responsibility that has been devolved from the provincial government to local government. Do you think it's generally a good idea that local government has planning responsibility, or would you think it would be better to be doing it from Queen's Park?

Ms Hurd: I don't know if the intention of the bill is to plan communities. I think it is to address a major rights question, which is the rights of tenants in units that have been created. Why should they be on the fringes of society? Why is it so difficult and why is it such a

problem for a person to put a unit in their basement? I think what we see in society is that people start doing certain things and then society and its institutions have to sort of catch up with them, and change and adjust and move forward.

But my concern, from the point of view of my organization, is the question of the rights of people who, just by virtue of not fitting into a zoning scheme, can lose their homes because a property standards inspector has decided the ceiling is an inch too short; you know, the kind of interventions that property standards can have where there's no effort to try and remedy a situation, to try and fix and support housing instead of just closing it down.

As has been pointed out, I'm sure, in other deputations, judges have gone in both directions on the question of whether the person is a tenant or not. At one point I did work for a legal clinic. This is 10 years ago in Scarborough, where we started identifying that problem. At first we thought, "Well, they might be covered under the Rent Control Act," but they weren't in some cases, and in some cases they were. We just could not advise people. We decided the only way to go was legalization. We had to look for some rights for people in the Landlord and Tenant Act and in clarifying zoning. We had to recognize that the zoning question was pivotal and that this was the problem.

Mr Stephen Owens (Scarborough Centre): Thank you, Barbara, and your organization, for your support of this legislation.

Representing a riding in Scarborough, and the generous estimates being somewhere between 10,000 and 14,000 accessory units currently in existence, I quite appreciate the fact that you've attacked two red herrings that seem to be launched in every opponent's presentation: first, the fact that all of a sudden we're going to see a dramatic increase in accessory apartments, which I don't believe is going to happen, and secondly, that the province is zoning municipally by fiat, which again is not true in any way, shape or form.

I like the fact that you particularly pointed out that certainly while the Liberals saddled the horse or put the gas in the car, they saw the writing on the wall in terms of the opposition from municipalities and did what good Liberals do, which was nothing, with respect to this issue. However, you're quite right that municipalities saw this coming, as being the wave of the future.

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My question to you, Barbara, on behalf of the other tenants whom you represent and on behalf of the tenants whom you soon will represent should this legislation become law, is, can you tell about some of the difficulties that might have been prevented had the Liberals gone forward with this kind of legislation back in 1989?

Ms Hurd: I'm not sure. Do you mean if they had convinced the municipalities?

Mr Owens: If basement apartments had been legalized, tenants had had rights and safety standards had been put into place, what kinds of things might have been prevented?

Interjections.

The Chair: This works a lot better if we just have one member speak at a time.

Mr Owens: This is the kind of respect that you get from your colleagues.

Ms Hurd: My general response would be that there would've been recourse to the law for the tenants who live there. It's generally a problem because of a whole lot of things about lack of resources. A lot of tenants don't know they have rights but, in particular, basement apartment unit dwellers did not know. Often, if they had been living close to their landlords or land owners, it might have made them a little hesitant to even investigate and they would have put up with a substandard living situation. I think many evictions would not have taken place, but I don't have any statistics on evictions from basement apartments.

Mr Owens: Because you can't keep statistics on what's not legal, essentially.

In terms of some of the calls that you may have received at the Scarborough legal clinic at which you were at one point working, can you describe for the committee the nature of the calls that you would have received?

Ms Hurd: Oh, lack of heat, lack of water, lack of privacy, changing of locks, stuff out on the front lawn.

Mr Owens: What kind of summary advice were you able to give to these tenants?

Ms Hurd: I was the administrator; I wasn't actually giving the advice. But we would proceed as if the person was a tenant; we would have to. If we didn't, we would just have to leave them sitting in the snow with their stuff on the front lawn. You would have to proceed to court and you would do what you could to use whatever parts of the law to let yourself back into the unit.

Mr Owens: Depending on the judge you got on a particular day would determine the success or not of the case that the lawyer or community legal worker would be advocating.

Ms Hurd: That's right.

Mr Owens: So this bill will in fact provide good protection for those people and will have a body of jurisprudence for legal workers.

Ms Hurd: Exactly.

Mr Hans Daigeler (Nepean): What I'm concerned about, frankly, is that I don't think the objective the government has set itself, which is, by the way, shared by both opposition parties and by pretty well everybody who has appeared before the committee, and that's housing intensification, is really going to be advanced much by this bill.

Yesterday, in Ottawa, I think most people said that. Even those who were strongly in favour of going forward with Bill 120 said they didn't think there was going to be much of a pickup and that the situation probably is going to continue the way it is, the reason being that, rightfully so, under this bill you still can legalize your apartment only if it meets certain fire standards. It may not meet certain zoning standards, but the costly stuff is obviously

fire and safety concerns. It's quite questionable whether the home owners of many of these existing apartments will go to the expense that is required under these regulations, which is the way it should be.

My question is, is it worth taking away a very significant power from the municipal level of government in order to achieve what? That the situation stays the way it is? I'm just wondering whether you would want to comment on it and, in particular, whether you have any thought as to how many apartments will actually become legal and then what happens to those that continue to stay in existence and continue to be illegal.

Ms Hurd: That's about five questions there. Could you restate it? Do I think there's any point in using this kind of a tool to deliver intensification?

Mr Daigeler: Right. To first of all take away the powers from the municipalities to do zoning considerations, because this is this what this does. But it does it, in my opinion, by not really achieving its own objective.

Ms Hurd: I thought the objective of the legislation was to correct a series of rights of tenants. That's what I saw as the objective. As far as intensification goes, I think intensification has been created through the legal means of creating apartments in zones where you cannot have apartments, when you cannot have two units in a single-family dwelling. I think that has been achieved to a certain extent. I don't think there's going to be a huge rush, so I don't know if intensification is going to be the achievement of the bill.

I don't think it's a wonderful thing when the province has to tell the municipalities what to do, but in fact the municipalities all across the province are created by the province and have to meet policies and overarching programs and standards that society agrees upon through the Planning Act and through the Municipal Act. So if certain things are not being done by municipalities and it has become a really important social issue where society is changing and moving in a direction and the municipalities aren't going in that direction, I think it's therefore required that some action be taken.

That's what our members, I think, would say, that the question of their rights is an important question for them, and whether intensification is achieved or not achieved is somewhat secondary.

Mr Daigeler: I find that rather interesting, and I appreciate that for you the main concern is rather the protection of the rights of the tenants and you don't really see intensification as a major objective of this. If I understand the government right, it does see housing intensification as one of the major objectives of this bill.

I'm just not sure whether you're going to achieve your objective either, because I'm pretty well convinced—it remains to be seen; maybe I'm wrong—but I think we're going to continue to have quite a few illegal apartments in which the tenants will continue to have no rights because they're not meeting the regulations and so on. What are we going to do with these? There the tenants will continue to have no rights. So really, is it worth it? That's my question. You answered it, and I appreciate the way you explained it.

The Chair: Thank you for appearing this morning.
CITY OF ETOBICOKE

Ms Brenda Burns: Good morning. My name is Brenda Burns. I'm a solicitor for the city of Etobicoke. To my right is Mr Bob Webb, the chief of fire protection for the city of Etobicoke. To my left is Ms Laurie McPherson, Etobicoke's director of policy and research in the planning department. To my immediate left is Chief Ramsay, the chief of the Etobicoke Fire Department.

We'd like to begin our presentation today by stating that the city of Etobicoke does support the issue of controlled accessory apartments. We support this issue for apartments that are sensitive to our existing community and safe for both the apartment and home residents.

As you may not know, the city of Etobicoke was one of the first cities to include provisions for accessory apartments in our new official plan. In connection with that new official plan, the city underwent extensive public consultation with our community.

The city's new official plan policy permits accessory apartments in owner-occupied detached or semidetached dwellings. This was later modified at the request of the Ministry of Housing to include duplexes and other ground-related dwellings, provided that there is adequate onsite parking, that there is unaltered exterior appearance and that there is no overcrowding.

1100

In terms of implementing the zoning amendments, there were several conditions. Those are that the city adopt standards under the health and safety act to prevent the overcrowding; that the city is given suitable legislative authority to enforce the owner-occupancy provision; that the Ontario fire marshal's office amend the Ontario fire code to address the minimum fire safety requirements for these apartments; and that the province permits the municipalities greater right of entry into residential dwellings to inspect suspected infractions of any regulations. We should let you know that these sections of Etobicoke's new official plan are currently deferred pending this legislation.

The city of Etobicoke has several concerns about this bill. First of all, we're concerned that it include the authority to allow municipalities to enforce the owner-occupancy requirements. Second, we're concerned that it provide a standard area requirement per tenant to address overcrowding.

We would also like to see it contain stronger right-of-entry provisions and allow municipalities to determine appropriate parking standards for accessory apartments, based on local conditions. We would like to see it allow municipalities to have control over exterior changes to dwellings to accommodate these accessory apartments and have these changes based on zoning code provisions.

We would like it to consider the implications of permitting accessory apartments in condominium and town house developments and also allow that dwellings containing these accessory apartments be counted as two units and that the accessory apartment be counted towards the municipality's 25% affordable housing requirement.

Finally, we would like to see a reassessment for tax purposes of properties containing these accessory apartments.

I propose to go through these briefly, and if you have any questions, perhaps after I've gone through them you can ask. In terms of the owner-occupancy requirements, the municipal housing statement, on which Etobicoke's new official plan was based, recommended that accessory apartments be owner-occupied.

The public concern that we've heard is the belief that the owner-occupied requirement is much more sensitive to neighbourhood concerns and that without these provisions excessive conversions or duplexing could take place.

The owner-occupancy requirement is more likely to disperse the units randomly and not cause increased demand for local services in any particular area. We would seek a change to Bill 120 so that it allows municipalities to require owner occupancy and provides the legislative authority for that enforcement.

In terms of overcrowding, Etobicoke's new official plan calls for a standard to prevent overcrowding before permitting these accessory apartments. Bill 120 does not provide such a standard. In order to prevent this overcrowding, we would suggest that Bill 120 provide for a realistic minimum floor area per person.

In terms of the right of entry, Etobicoke's official plan seeks greater right-of-entry power before permitting these apartments. This is needed to inspect for infractions of provincial and municipal laws, especially the fire and building code infractions. Currently a city official needs either the consent of the resident to enter or a search warrant, and to obtain that search warrant, the municipality must specify the reason for the search and the evidence to be seized.

Bill 120 purports to make that easier by removing the evidentiary requirement, but there's still a tremendous obligation on the municipality to provide enough evidence that there are reasonable grounds that an offence is or has been committed. That's a difficult obligation to meet without first inspecting. It's sort of a never-ending circle.

We would suggest that there is a provision for a warrant to inspect issued by a justice of the peace. It has also been suggested by our fire department that the municipal address of homes containing either garden suites or basement apartments be altered to reflect either a G or a B. If there is a garden suite or a basement flat, this would assist in responding to 911 emergency phone calls.

In terms of the parking, Etobicoke's official plan does contain a provision for adequate onsite parking, and this is due to the concerns of local residents about parking on local streets. The bill's parking standards would take precedence over the municipal standards, and the bill's standards are that there be two parking spaces for units with accessory apartments but that this requirement can be met through legal street parking within 100 metres of the dwelling. We think this is not satisfactory and that each municipality should be able to set its own parking

standards in response to the local community's concerns.

In terms of external changes, our official plan prohibits exterior changes to houses with accessory apartments, to minimize visual impacts on neighbourhoods. The bill does not allow a municipality to prevent modifications required to accommodate accessory apartments. We think that exterior changes should only be allowed to any homes with accessory apartments if they conform to all municipal standards. These municipal standards, of course, were set up to preserve the character of our city's neighbourhoods.

With respect to the town house units or condominium town houses, our official plan originally did not permit accessory apartments in town houses, but it was changed. It was included on the condition that all other official plan requirements, including owner occupancy, onsite parking and the no-external-change requirement would be met.

Since the majority of town house developments in Etobicoke have limited parking, in essence, this would prohibit accessory apartments, based on our onsite parking requirement in the official plan. So Etobicoke essentially does not support accessory apartments in town houses unless all other criteria as we've mentioned today in the official plan are maintained. We also think Bill 120 should consider the implications for condominium town houses; that is to say, the status of controls in a corporation's bylaws or individual development agreements versus Bill 120.

In terms of the density calculation, under Bill 120 homes with accessory apartments could not be considered as two units when calculating density, and density cannot be used to restrict accessory apartments. Theoretically then, the actual density in area could reach twice the approved density. This puts a strain on services. As you know, services are planned according to the number of units and persons per unit.

The provincial housing policy statement indicated accessory apartments within existing dwellings are not part of the 25% affordable calculation for new residential units the city is responsible to provide. We feel that they should be counted towards this 25% affordable calculation because the entire purpose of accessory apartments is to increase the supply of affordable housing.

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With respect to municipal finance, it's been said that these accessory apartments will increase the tax revenue for a municipality due to the increase in the house value. Under the current drafting of Bill 120, the city of Etobicoke anticipates a greater pickup for the accessory apartments than it had anticipated under the new official plan. That's because the new official plan in Etobicoke had greater restrictions. Therefore, we anticipate an even greater burden on city services. We would need, therefore, a reassessment of these homes with accessory apartments in order to set the wheels in motion to benefit from the tax revenue and partly offset the services burden.

The city of Etobicoke does realize that due to its location it's a relatively expensive community in which

to live. House prices are expensive, and it recognizes that accessory apartments meet several needs of its community. They allow seniors to remain in their homes longer and they provide low-cost housing for young couples or singles or other people. Accordingly, as I've already mentioned, the city of Etobicoke was one of the first communities to consider and support the issue of accessory apartments in its new official plan. It did so, I suggest, with significant public consultation in order to be sensitive to the needs of our community. It also did so before this legislation or Bill 90 was drafted. We think that the controls as set out in our new official plan should be paid attention to, as I've outlined to you here today.

Those are our submissions and our brief. I hope, if there are any questions, we can answer them for you.

The Vice-Chair (Mr Hans Daigeler): Thank you very much. Will we receive what you said in writing?

Ms Burns: No. If you'd rather, I can provide it to you, but I thought we'd just be here today.

The Vice-Chair: If you can, I think it would be useful. It's helpful for the committee and also for the ministry, because you have a number of technical points that you raised. I think it would be useful to leave it with us.

Mr Owens: Thank you for your presentation, Ms Burns. I'd like to ask you about the issue with respect to owner occupancy. This is something I've had to work through in terms of my feelings around the "neighbours from hell," I guess is the way you would characterize the problems that you would have in Etobicoke and the city of Scarborough.

In working through this issue, I came to the conclusion that it's very difficult to deal with the neighbours from hell differently in a single-family dwelling; if you have a family that parks its cars on the front lawn and doesn't cut the grass or has loud parties till 3 or 4 o'clock in the morning or all the other things that aggravate people on the street, how you could have two different ways of dealing with the single-family dwelling versus the residents with an accessory apartment.

Some of your colleagues from I guess Peel and Hamilton, from their legal departments, have come in and said that they've tried to wrap their minds around the issue as well but couldn't figure out how to do it vis-à-vis charter issues with respect to zoning by occupancy. How did you get around that and what advice did you get with respect to charter issues?

Ms Burns: I'm not exactly sure what you're asking, but it seems to me that our concerns with respect to owner occupancy—I think I've outlined them to you here today—can be met through a variety of methods. One is an agreement which can be entered into similar to the agreement as provided for garden suites in terms of ensuring that the owner is an occupant of the home. It's already provided for those types of suites; I think a similar type of agreement can be provided in this case.

Mr Owens: There's a finite relationship in terms of the garden suite or the granny flat, if granny or grandpa, a grandparent, passes on or decides too that they have to move a different type of accommodation. But, again,

what we're talking about is zoning by occupancy. I'm not understanding how you can do that and why you would want to treat one type of dwelling, the single-family dwelling where the nuclear family lives, versus the house beside that single family dwelling that happens to have an accessory apartment and why there would be two standards in terms of zoning and enforcement.

Ms Burns: I suppose I'm a little confused as to where you're coming from—

Mr Grandmaître: We all are.

Mr Owens: These guys are paid to be confused, especially the Liberals.

The Vice-Chair: Quiet.

Ms Burns: Those two situations I think are quite different. You've got a situation where you've got two homes and one home has an accessory and the other doesn't. So it seems to me that as a qualification or as a requirement in order to have one of these accessory apartments, the owner should be under certain obligations. I think those obligations are to his or her community and to his or her neighbours.

Mr Owens: I agree, but why shouldn't the—

The Vice-Chair: I'm sorry, Mr Owens, but if you want to leave some time for Mr Wilson, he's next.

Mr Gary Wilson: Thanks very much for your presentation. As the parliamentary assistant, I'm really pleased to hear this qualified support for Bill 120 and your movement in the past, even before, as you pointed out, Bill 90 and now 120, to move on the issue of accessory apartments.

I think what we're looking at here is just a question of the kind of standards that are in application. You do give a very complete presentation which, as the Chair suggested, would be easier to respond to, in detail at least, once we see it and we have it on record. We will be responding both through the regulations that will be part of the bill, as well as the clause-by-clause where you will hear the reasons how we are taking things into account.

Generally, I would say that what we're trying to do here is put in standards that are reasonable and that will mean that municipalities won't be able to restrict the placement of accessory apartments through standards that are unreasonable, in effect; that is, through the size of the unit, for instance. As far as parking goes, for example, the bill doesn't say that if on-street parking is prohibited by municipal bylaw, then that would be overridden. There are these issues, which the regulations will address, that will work in with the municipalities, we think, in a reasonable way.

Just to go back to Mr Owens's issue, though, in part the owner-occupancy would be treating the tenants of apartments in houses differently from tenants in other places. For instance, you would be under the—

The Vice-Chair: And the question is?

Mr Gary Wilson: Okay, I'll put a question. What would happen to a tenant living in an apartment in a house where it is sold? How would you fit it in some obligation on the part of the buyer that they would have to accept the tenant?

Ms Burns: Again, I think the city of Etobicoke would look to regulate that type of thing through agreements. As I've already mentioned to Mr Owens, we would hope those agreements would be similar to the garden suite agreements with respect to owner occupancy and obligations on indeed the owner of the home and the tenants themselves.

Mr Gary Wilson: Sure, but I think you can see the problems: Why not apartment buildings, for instance, having the same kinds—and it gets incredibly complicated.

Ms Burns: I think these are quite different situations. This is a more sensitive situation for our communities.

Mr Grandmaître: I think your message this morning is very clear. You'd like to cooperate with the provincial government, or Bill 120, but what you've told us this morning is, "Give us the tools and we will cooperate and make Bill 120 more reasonable."

My question would be to the fire chief. Have you seen the proposed amendments to the Fire Marshals Act?

Mr Donald Ramsay: Yes, I have a copy of the draft in front of me.

Mr Grandmaître: Good. Can I get your comments on some of the amendments? Are they acceptable?

Mr Donald Ramsay: They deal with the items that are of concern to the fire service at the present time.

Mr Grandmaître: Why don't you deal with the right of entry?

Mr Donald Ramsay: The right of entry has always been a problem for fire service people in that the requirement for a search warrant when the owner says no presents particular problems for us, because we find that search warrants are not easy to obtain and we have trouble finding the right evidence to support a search warrant when we know, from whatever source, that there is a problem.

The right of entry, while it is a legal thing, may be better addressed with a type of fining system whereby if you don't provide access, the fine system would make it incumbent upon the owner, I guess, to look at how much it's going to cost him if he doesn't let us in.

Mr Grandmaître: Miss Burns referred to a warrant to inspect. Could you expand on this warrant to inspect? I think you're on the right track, instead of a search warrant.

Ms Burns: Basically, it's just an idea we've kicked around a little bit, but it makes it a little easier for us to enter and to inspect for these infractions. As it is now, it's practically impossible. These are potentially very dangerous suites downstairs, and we need to have the tools. I think that having it being issued by a justice of the peace, there still remains a controlling power over these warrants. They can't be just issued for a whim. For instance, the city can't issue them to itself, but if a justice of the peace goes and allows us to inspect to provide evidence, then I think that's one step towards being able to ensure that these accessory apartments are safe.

1120

Mr Grandmaître: You did say that you deferred your

official plan for the simple reason that you wanted to implement some of the actions of Bill 120 into your official plan; for instance, parking, zoning and so on and so forth.

Ms Burns: Actually, the ministry deferred our official plan.

Mr Grandmaître: That's interesting.

Ms Burns: It must go to the ministry for approval. They have several options. They can refer it, or several sections, to the Ontario Municipal Board or defer it. In this case it went in and parts of it were deferred. These sections pertaining to accessory apartments were deferred pending this legislation. But we don't seek to change it. We're hoping the legislation will react to our official plan.

Mr Grandmaître: So the ministry has deferred it. The Ministry of Municipal Affairs or the Ministry of Housing?

Ms Burns: Municipal Affairs, but I believe it's done at the request of the Ministry of Housing.

Mr Grandmaître: I see. So we're all wasting our time here.

Ms Burns: Perhaps you can tell me.

Mr Grandmaître: Bill 120 will go through and your official plan will reflect the requirements of Bill 120. That's a democratic way of dealing with official plans. Now, can I talk about the minimum floor space that you alluded to?

The Vice-Chair: If it's within 20 seconds.

Ms Burns: That's right. If that's your question, we do believe that there should be a minimum floor space requirement per person and that it should be calculated using the floor space of the basement or whatever unit, not the house itself. I'm not sure exactly what figure we want to use, something like nine square metres comes to mind, but that would have to be settled on. But certainly it should be calculated on a unit basis.

Mr David Johnson: Thank you for your deputation. It reminds me of some of the aspects that we went through in East York. I recall that Etobicoke did come forward with a position on this and you've indicated to us that the ministry has deferred it. I just can't recall the timing on that. When was this sent to the ministry?

Ms Laurie McPherson: The official plan was approved by city council in 1990 and it received partial ministry approval in 1992.

Mr David Johnson: So the Ministry of Municipal Affairs and the Ministry of Housing have had Etobicoke's position on accessory apartments—

Ms McPherson: July 1990.

Mr David Johnson: —which would permit quite a number of accessory apartments, basement apartments, in Etobicoke, since 1990 and you have yet to receive approval?

Ms Burns: Yes.

Mr David Johnson: We have been told by the ministry that municipalities have not been responding to the accessory unit issue.

Ms Burns: I think Etobicoke has, in fact, taken a very active step towards looking at the issue of accessory apartments.

Mr David Johnson: There's one thing I just wanted to get clear off the top because some of the comments perhaps muddled where Etobicoke's position was on Bill 120 itself and I just want to ask you directly: Does the city of Etobicoke support Bill 120 in its present form, as it has been written?

Ms Burns: No.

Mr David Johnson: No. Thank you. That will make that clear. But you have come forward with a policy that was sent to the ministry in 1990 which would support a vast number of basement apartments, a vast number of accessory units, and this was done in consultation with the people of Etobicoke and this was the consensus that was arrived at by the people, by the staff, by the council?

Ms Burns: Yes, that's right.

Mr David Johnson: Good. Back to the right of entry, which has always been a major problem, I know, with municipalities, and you've described it full well. The fire department I know has problems getting in, the property standards people, and everybody that needs to inspect. The concept of warrant to inspect that has been alluded to earlier seems interesting. Is that something that's in place now, or is there such a thing today as a warrant to inspect?

Ms Burns: Not to my knowledge, no. We're quite restricted in terms of warrants, search warrants or any special warrants.

Mr David Johnson: I'm just guessing, but I can assume your concept would be that it would be something that would be less onerous than the, what do they call it today, the search warrant, I suppose.

Ms Burns: That's correct.

Mr David Johnson: The reasonable grounds that would have to be proven I assume would be less onerous than the warrant to inspect.

Ms Burns: That's right.

Mr David Johnson: And this would be of use to the fire department, for example, and the property standards?

Ms Burns: That's right, for both our fire and our building departments. I think they have interest in ensuring that these apartments are safe.

Mr David Johnson: I think this is something that would be useful to develop a little bit further, because it's certainly the government's position that just removing the necessity to seize evidence is going to make this process a whole lot easier and the reasonable grounds will not be a problem and if you need to get in you'll get in. I dispute that, based on my experience, and I see by you nodding your head that you dispute that too. Perhaps you'd expand on that.

Ms Burns: I think you want to be careful that you don't give extraordinary power to a municipality to just barge in on any apartment, any home, that they wish, but I think you can govern that through, as I say, a justice of the peace. I think we have to reduce the obligation in terms of the onus on a municipality to provide any kind

of reason for the search warrants to be provided. I think they have to be provided easier. Hopefully, it's only for all of the tenants' safety that these would be provided in any event, so I think, yes, you're quite right.

Mr David Johnson: Obviously, you feel that the owner-occupied aspect is possible under law.

Ms Burns: Yes.

Mr David Johnson: The government has questioned the technical feasibility of doing that and I guess it has something to do with the Constitution or whatever, but you have a legal background and it's your view that if minds were set to this, it in fact could be put into law?

Ms Burns: That's right.

Mr David Johnson: Maybe just a question to the fire chief: The draft fire code regulations are out and for a basement apartment—they suggest two accesses, one of which could come through the main dwelling unit. You may not have seen these; I don't know. I'm sure you've talked about them at some length. As I understand it, one method of exit could be a window and one access could be through another unit. It has to go outside but it could be through another unit.

I've certainly had differences of opinion on that from other fire chiefs. Some fire chiefs say windows shouldn't be accepted because you may have disabled people and no matter how big you make the window they can't get through it. Other people say you should not allow an exit through another unit because how can you guarantee that somebody isn't going to lock that exit through the other unit. I don't know what your views are.

1130

Mr Donald Ramsay: The draft does address both the exit or the means of egress through a dwelling unit and a window. I'm sure it's been alluded to before that the window is not, in the fire department's estimation, the best means of egress, particularly with basements that have windows that are small in size and are too high off the floor to be able to reach them, plus the fact that it is difficult to exit through a window. If anyone's ever tried that, you don't go through windows easily. In smoke conditions, if you're talking about a basement, the smoke that you're going to have to go through is at the window level. Ideally, what you'd like to see are two means of egress. Two means of egress to grade would be ideal, but the draft doesn't address that because I don't think we could ever achieve that.

The Vice-Chair: Thank you very much for your comments and thank you for your presentation. We would appreciate if in due course you could send us something in writing, because I think that would also be helpful for the ministry and may increase your chances to be respected in the final draft.

CITY OF SCARBOROUGH FIRE DEPARTMENT

Mr Thomas Powell: My name is Tom Powell. I'm the fire chief of the city of Scarborough. I have on my left-hand side Director Andy Everingham, who is in charge of the fire prevention division of the City of Scarborough Fire Department, and his assistant director on my right-hand side, Mr Brian Miskimmon, who also runs a fire prevention division there, here with me to

assist me if you catch me with any questions I'm not too familiar with, particularly when you get into the technicalities of the code.

Today I'd like to take this opportunity to voice my concerns regarding fire safety in accessory apartments in houses. It's a common assumption that 15,000 to 20,000 basement apartments exist in the city of Scarborough. This number is obtained by the premise that there are 10% basement apartments within a municipality. The 10% in our city works out roughly to about 16,000 if you take three people per apartment.

Many of these units, we have found, lack the very basics in fire protection for the occupants. This has been shown on three occasions in Scarborough, where tragic fire deaths have occurred within the past year. That accounts for 50% of the fire deaths in the city.

It is a fact that these basement units are there, and I want to address the minimum safety measures required to ensure a degree of fire safety for the occupants.

The provision of minimum fire safety standards for these accessory apartments would without doubt substantially reduce death and injury from fire. Bill 120 does not address our concerns regarding these units. In fact, it does not contain any reference to the changes or improvements in the Fire Marshals Act or the Ontario fire code.

In reality, a draft regulation for inclusion into part 9 of the Ontario fire code is in existence. This draft regulation, entitled "Two Unit Residential Occupancies," addresses most of my concerns. This proposed regulation 9.8 of the fire code provides for the installation of fire safety equipment, containment of fire, early-warning devices and the provision for at least one fire safety exit from each unit.

Containment will provide approved minimum fire separation between units, floors and service areas such as furnace rooms. This separation is usually a non-combustible barrier, such as drywall, and covers combustible elements in partitions such as wood studs, ceilings and walls. This will contain a fire in a particular area for a period of time, depending on the thickness of the drywall.

For means of egress, a minimum of one fire-safe exit is required. That exit must serve only one unit, open directly to the exterior from that unit and have direct access to the grade. If this safe means of egress cannot be attained, then two means of egress may be required, one of which may be a window. However, this window is not a viable option for many persons, including children, the physically challenged and even occupants who may be impaired through alcohol or drugs.

The regulation should also provide for early warning and detection. This should be accomplished by the installation of smoke alarms, which may be of an interconnected, hard-wired type or battery-powered.

It should also be required that a complete electrical inspection by Ontario Hydro be performed. Many of these houses originally had an electrical supply and outlets sufficient for single-family dwellings. However, after the addition of a basement apartment, almost twice the amount of electrical power is required. This electrical inspection will ensure that power supply, wiring and the

number of outlets are safe and adequate for two households. An additional stove, refrigerator, television and other electrical devices may seriously overload an older electrical system.

Regulations would indeed provide an increased level of fire safety for most residents. However, most of these features can be rendered ineffective. For instance, studies have shown that many tenants do not maintain the fire protection provisions. Batteries have been removed from smoke alarms, fire separations have been breached and doors have been propped open.

The most effective means of protecting the occupants of accessory apartments is a residential sprinkler system. I support the concept that residential sprinklers be provided in basements of two-unit residential occupancies. Residential sprinkler systems will control and even extinguish a fire before it reaches a size to endanger the occupants. By installing the residential sprinkler system only in the basement, the cost is greatly reduced and will enhance the other safety features outlined in the draft regulations. In fact, as a fire chief, I consider the installation of residential sprinklers to be of prime importance.

A study conducted in April 1991 for CMHC suggested that installation costs for the installation of residential sprinklers was approximately \$18 per square metre. The average basement apartment that the Scarborough fire department has inspected was approximately 75 square metres in area. The theoretical cost therefore of the average basement apartment would be \$1,350. That is approximately two months' rent. Surely the increased safety of the occupants is worth that meagre outlay. Taking into account the cost of furnishing an apartment, including kitchen, bathroom, carpets and the cost of furniture, the expense of adding residential sprinkler protection is a sound business decision.

Our experience has shown that up to 25% of basement apartments are owned by absentee landlords. Therefore, it can be deduced that these units are rented for profit only. Basement apartments rent from \$750 to \$1,000 per month, permitting an income of between \$9,000 and \$12,000 per annum. Surely out of these revenues, it would not be a major hardship to provide the very best in fire protection for the occupants in basement apartments. The installation of residential sprinkler systems, along with containment features, early-warning devices and fire safety exit facilities will indeed provide an acceptable level of fire safety for the occupants of the basement apartments.

The proposed draft, when included in part 9 of the fire code, would be enforced by fire service personnel, either fire prevention officers or on-duty firefighters. Bill 120 proposes that the enforcement agency obtain search warrants to gain entrance to the premises. These are very difficult to obtain. The previous speaker, I think, dealt with that.

The Fire Marshals Act provides the fire service with the right of entry. However, this is extremely difficult to use in single-family dwellings. Some municipalities, ours included, charge property owners with obstructing a fire prevention officer in his or her duty when they attempt to

gain entry. In a high percentage of instances, this is effective. It is extremely time-consuming. Bill 120 must, in our opinion, contain provisions to require the property owner to admit the inspector for the purpose of conducting a fire safety inspection and set fines for refusing entrance. These powers must be included in the Fire Marshals Act.

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Owners of accessory apartments in the house must be required to register these units with the local municipalities. The registration of these units would be advantageous in many ways, including assisting the local fire department in scheduling an inspection, review of the plans, reinspection and prosecution where infractions of the regulations occur, not to mention the fact that the operational firefighters will find a tremendous advantage to know that they're approaching a multiple-occupancy and not a single-family dwelling. The owners of these properties would also be required to maintain the accessory units in acceptable condition enforced through an inspection program.

It is my hope that your committee will take action to put in place regulations improving fire safety in accessory apartments in houses by adopting the following recommendations.

(1) The fire code should be amended immediately to include the draft safety regulations for accessory apartments in part 9, retrofit.

(2) Bill 120 should include provisions to allow municipal fire safety officials the right of entry without the need for a search warrant to ensure compliance with the minimum safety standards.

(3) Bill 120 should contain provisions to require owners of accessory apartments to register the properties with the municipality in which the properties are located.

(4) The Fire Marshals Act should be amended to have fines collected for prosecutions under the fire code paid to the local municipality, as is currently the practice with the building code.

(5) The building code should be amended to require the installation of residential fire sprinkler protection in all residential premises constructed or renovated to accommodate basement apartments.

Mr Chairman, that's my presentation. Thank you very much for giving me that opportunity.

Mr Daigeler: Thank you for your presentation. At the beginning of your remarks you mentioned three unfortunate fire deaths within the past year. These occurred apparently in basement apartments. Where these legal basement apartments?

Mr Powell: The definition of "legal" is questionable. They did not conform to the zoning bylaws of the city of Scarborough.

Mr Daigeler: Was there ever any kind of inspection, to your knowledge?

Mr Powell: No, we were not aware of those basement apartments. There were six deaths in the city of Scarborough; three of them were in the basement apartments.

Mr Daigeler: So they could be considered as illegal apartments.

Mr Powell: By definition of zoning, yes.

Mr Daigeler: What's the liability of the owner in these cases then? Would you know? Was there anybody sued or something like that?

Mr Powell: There were no legal actions taken against the owners of those buildings, no. There are some liabilities within the Criminal Code for people who fail to carry out the directions of a fire prevention officer and there is a death. We have not pursued that. We found, I believe, that in this particular instance all of the smoke detectors—and I'd stand corrected by the director—within those basement apartments were not working.

Mr Andy Everingham: They were present, but they were inoperative.

Mr Daigeler: To your knowledge, then, nobody has brought this matter before the courts, not necessarily in your municipality, but anywhere else? I'm not a lawyer, but it would seem to me that there would be some sort of liability of the owner if there's no proper fire protection. But anyway, to your knowledge, this has not been tested in the courts?

Mr Powell: No, sir, it has not.

Mr Grandmaître: What about fire prevention in your municipality? How many full-time people are working on fire prevention and doing inspections?

Mr Powell: We have a full-time fire department of 527. Perhaps I can defer that question to the director.

Mr Everingham: I have, including myself, a staff of 18 on prevention.

Mr Grandmaître: Do you consider this adequate?

Mr Everingham: To handle basement apartments, if and when Bill 120 passes, no.

Mr Ron Eddy (Brant-Haldimand): Thank you very much for your presentation. I think the most important issue is the matter of fire protection because it is indeed a matter of life and death. I really appreciate you looking at the whole matter and coming forward with very firm recommendations.

I was interested in the hydro inspection, and it'll be a municipal hydro service. Do you tie in with them on inspections, and what right of entry do hydro inspectors have? I know Ontario Hydro inspects rural outdoor installations and it just tells you, "If you want hydro, do this." So you do it.

Mr Everingham: When we make requirements for upgrading of electrical problems or indeed when we run across electrical problems, we can issue a fire marshal's electrical order, which gives Ontario Hydro the right to enter and conduct an inspection as required.

Mr Eddy: And indeed cut the service off if nothing is done?

Mr Everingham: If it's not corrected, they can remove service. That's not done through the municipality.

Mr Eddy: Yes.

Mr David Johnson: I'd like to thank you, too, for an excellent brief.

Let me get back to the question of the fire-safe exits. Chief, you've indicated that there should be at least one exit that goes directly outside to the exterior of the property. The draft regulations don't necessarily provide for that, as I interpret the draft regulations. They say that dwelling units should be served by at least two means of escape arranged in such a manner that one means of escape must be through a door which may lead through another dwelling, and the second can be through a window and the window has to be of a certain size. But if you have those two, then you don't necessarily have to have one exit directly outside, as I interpret it.

The sense I get is the fire chiefs are sort of reluctantly going along with that. Is that how you'd describe it, or am I wrong?

Mr Powell: I guess it's not fair to say that we're reluctant to go along with it, because we have participated in the draft. I think it's fair to say that you're correct, we have some concerns and I have outlined those in my presentation, that small children, people who are physically handicapped, perhaps under the influence of alcohol or drugs are going to have a great deal of difficulty getting out through a window.

Mr David Johnson: As I interpret this window, for example, it says that no dimension should be less than 460 millimetres. I don't know, when I was brought up, it was inches, so I'm trying to visualize 460 millimetres. Is that about 18 inches?

Mr Everingham: It would be 18 inches, yes.

Mr Powell: That's a technical question.

Mr David Johnson: I just wonder, if we look at the people around this room here, how many would have trouble getting through a window that had the dimensions 18 inches.

Mr Everingham: It also has a minimum overall size, but it can't be less than that.

Mr David Johnson: So one could be two feet wide or something by 18 inches, and it would be up, of course. Most basement windows would be up right at the top.

Mr Everingham: But there are provisions to make sure that it's no more than I believe 900 millimetres, which would be about three feet, from the stepping point into the window.

It might be noted as well that if this option is used, then the interconnected smoke alarms are required, which would provide early warning for both units. In other words, if there was an incident in the upper unit, the people down below would have early warning and perhaps be able to use that means of egress.

Mr David Johnson: One of your recommendations is fire sprinklers, of course. This is where you seem to be very adamant, and we've heard other fire chiefs speak. I think perhaps you're the most adamant in terms of the sprinkler system. Others have certainly said it should be there, but you're really saying, "You must have it." This is a strong recommendation I think you're making.

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I can only anticipate that the government may say, "If we don't put it up on the main floor, why should we have

to put it in the basement?" I think the circumstances are different in a basement apartment and I want you to have the opportunity to say why you think they're different and why it's important to have it in a basement apartment.

Mr Powell: Thank you for the question. I think it's important. You're quite correct, I am perhaps a little bit stronger than most, but I do know there are other chiefs out there who strongly support this. The problem with basement apartments is that they're not originally designed to have a full-family unit within them. They were originally designed as part of a home for some other purpose—a family room, storage, whatever you want to put in a basement—but they were not usually designed to house a full family. It's my belief that they need that additional protection, and it's a very low-cost item. As I pointed out to you, \$1,300, in terms of somebody making a profit of \$12,000 a year, is a very small amount, and he only has to do it once. They don't have to do it every year. I think it's a very small amount that could be used by the landlord, whether he be residential or whether he be absentee, to make his own property safe. I think it's a business decision as well as a safety factor for the occupants of the building. Yes, I am strong, and I thank you for giving me that opportunity.

Mr David Johnson: We've discussed the windows. Somebody may have to get out through a window, and that differentiates from a main-floor unit again.

Mr Powell: The combination of all of the factors in the proposed 9.8 and the suggestion of sprinklers is going to make it a lot safer place for the occupant. Our concern is purely safety. We've purposely avoided all the other issues that you're probably facing. We're dealing purely with safety here.

Mr David Johnson: I'd like to carry on then with the right of entry, and this is something that I think bears reiterating. There is an impression in some people's minds that with the new provisions in Bill 120 it will be quite easy for building departments, property standards people, fire departments to gain entry into these apartments, even if they're not invited in. There's the feeling that the changes will make it such that you can just get right in, no problem at all. I think you've indicated that you still have concerns, but I think this is a main point. Again, I'd like you to have the opportunity to express your concerns in that regard.

Mr Powell: That is a very serious concern of ours. In Scarborough, for example, since September we have had to issue legal proceedings to gain entry on 12 occasions, or 10 or 12 occasions, between those numbers.

Generally speaking, when we issue the request we get entry. In fact, I think there was only one occasion—I stand to be corrected again—when we've actually had to proceed within the last number of months. We believe that's going to be another thing that stands in the way, if we have to go get a warrant. We have to have justification for the warrant and we have to be able to get that justification. We can't get it unless we can get in.

Mr David Johnson: It's catch-22.

Mr Powell: It's catch-22; that's right. So we're in a

position where we know there's a problem in the building. We can't get into the building. The landlord, for whatever reason, may choose to obstruct us, for whatever his or her reasons may be.

We feel that we need the ability to be able to get in for the safety of the occupants, and the safety of the occupants on both levels, whether it be an absentee landlord, for example. That's why we're asking for that authority be put into the Fire Marshals Act.

Generally speaking, firefighters and fire inspectors are well received. Usually we approach a building and a large number of people will allow us in the door. But there are those few who like to test the system, and when they test the system, warrants are a definite barrier for us. That's why we need that access.

Mr Owens: Welcome, Chief Powell. I want to thank you for your presentation. I think that your recommendations make some sense. I'd like to ask you a couple of questions. I'd like to go back to the right-of-entry issue. I think you are absolutely right. If the fire department turned up at my door and said, "Mr Owens, I'd like to come in and look at your premises," I don't think I would have a problem in terms of letting you in. I don't think most reasonable people would either. I guess my question would be, how would you attend at a premises? Would it be on a complaint basis or for the purposes of inspection? How does that work?

Mr Powell: All of the instances we have dealt with to this point in time have been by complaint only.

Mr Owens: By a neighbour or by the resident?

Mr Powell: It could be anybody. Usually we don't disclose that.

Mr Owens: That's fine.

Mr Powell: I'm pleased to hear, Mr Owens, that we can come to your house and inspect your house. We'll be there tomorrow.

Mr Owens: No. Get away from me.

Mr Mike Cooper (Kitchener-Wilmot): Get those paint cans away from the furnace.

Mr Owens: Those 12 people living in my basement would object, though.

In terms of your comments with respect to the sprinklers and costing, I think that's an excellent point. I think once you get past the warm and fuzzy side of housing and things like that, it's clearly a business issue and people will make money from it. In terms of high-rise buildings, one wants to maintain the investment and protect the investment. I would imagine that insurance companies would be looking quite closely at residential dwellings that put in an accessory apartment to see what kinds of protections they would put in. So I think your comments with respect to sprinklers are quite reasonable from both the safety perspective and again in terms of the maintenance of the investment.

You've done some work on the draft fire regulations for the government. It's my understanding, and I don't want to put words in your mouth, that at this point you're satisfied with the provisions to date, with what the government has in draft.

Mr Powell: Yes. The draft form, as I indicated, meets most of my concerns but it doesn't meet all of them. Naturally, you can't expect everything.

Mr Owens: In terms of your commitment to the process, you will continue of course to work with the draft, and as it is only a draft, certainly looking for improvements.

Mr Powell: Yes, we will, Mr Owens. We've been working closely with the fire marshal's office on this particular issue.

The Chair: Just for your information, Mr Cooper is also interested. You may continue, Mr Owens.

Mr Owens: I just have one last question. Far be it from me to preclude my colleagues. In terms of what's happening now in the city of Scarborough, and I don't want to play politics with people's lives, and in terms of the three people that you talked about in your brief as dying in basement apartment fires, in terms of the overall thrust of the bill in regulating and providing tenant protection, do you see this as a good thing to happen in the, you're saying, up to 20,000 units in the city?

Mr Powell: I try to stay out of the political issues of whether or not they should exist. My concerns are purely in safety. If this brings the question of safety and approves that, then I'm heartily supporting that. I think that's a very important element of any legislation, the safety of the occupants of the building. I'd rather not speak on the issue of whether it's an appropriate bill or not an appropriate bill. If you're going to do this, I suggest you put the safety issues in there.

Mr Owens: Absolutely. Thank you, Chief.

Mr Cooper: I'd like to thank you for your presentation. I guess I'll try to tie this all up within one. In the 1960s and 1970s there was a phenomenon where basically city dwellers moved into their basements and they started creating rec rooms and living rooms. I was wondering whether or not this changed your job, as this will change it now that we've progressed into basement apartments.

To tie that in, you were talking about the registration of basement apartments. I know in Kitchener, we lost our fire chief because he was found on the basement steps. I know the work you've done in fire prevention. You've worked with the government on workplace health and safety, where you get the book and you know exactly what you're going into. Is this just an extension where you want it registered so you know exactly what you're going into? I know you really go for prevention and you'd rather not respond to any fires, but when you do respond, I know you like to know exactly what you're getting into. Would Bill 120 help all this?

Mr Powell: If there's some requirement within Bill 120 for a registration and notification of the fire department, and if there's some provision where the fire department can gain access and if there's some provision for inclusion of all those articles I've talked about, then I would say yes, I'm supporting it.

The Chair: Thank you, gentlemen, for appearing this morning before us. Your information was helpful.

The committee recessed from 1201 to 1401.

LABOURHOOD HOMES RESOURCE CENTRE

The Vice-Chair: If we can start the afternoon sittings of the standing committee on general government, we're dealing with Bill 120. The first presenter this afternoon is Paula Randazzo from the Labourhood Homes Resource Centre. You have half an hour, and if you'd leave some time for questions and answers, it would be appreciated.

Ms Paula Randazzo: I've provided written documentation for your own use. I have to apologize for some of the typos. I was still typing this out this morning, so it's sort of a rush job.

I'd like to first thank the government for the opportunity to present our response to Bill 120. I'd also like to introduce myself. My name is Paula Randazzo. I'm the director of Labourhood Homes Resource Centre.

Let me tell you a little bit about Labourhood. Labourhood was created in 1989 as a joint initiative of the Hamilton and District Labour Council and the social planning and research council. It was further incorporated in 1992.

Labourhood is a non-profit organization, directed by a volunteer board of directors from organized labour and community groups in the Hamilton area. I've listed these groups because I wanted this committee to understand the broad range of people and organizations that participate in Labourhood.

They include the labour council; the Steelworkers; the Auto Workers; the Canadian Union of Public Employees; the Office and Professional Employees Union; the Hamilton-Brantford Building and Construction Trades Council, the Labourers' International Union of North America, the Canadian Union of Educational Workers, the Ontario Nurses' Association, Local 70, the Hamilton Housing Help Centre, the McQuesten legal clinic, the Hamilton and district health council and the city of Hamilton planning department.

Labourhood's mandate is to work with the labour movement to provide good, permanent, affordable housing in accordance with the democratic principles of the union movement. Labourhood's goal is to provide leadership and education in the development and self-management of housing projects sponsored by the labour movement. Labourhood also conducts research and advocacy in the housing field.

Labourhood will meet the challenge to provide increased access to permanent housing by encouraging labour organizations to meet the needs of inadequately housed individuals and families by building community support for the creation of affordable housing; raising community awareness of housing issues; providing an education program to ensure the full participation of members, tenants and sponsors throughout the successful development, management, administration and functioning of a housing project.

Labourhood strongly supports Bill 120 and commends both the Ministry of Housing and the NDP government for this courageous step forward for tenants, home owners and seniors. The following has included our reasons for support as well as some recommendations that would strengthen the intent of Bill 120. I'll outline the

reasons for support first.

Labourhood commends the Ministry of Housing for recognizing housing as a right. This bill adequately addresses exclusionary zoning bylaws, thereby opening the doors to a broader range of choices for tenants and home owners. Furthermore, the bill extends protection and provides security for tenants, especially those tenants who have been unfairly subjected to what is called garbage bag evictions.

Municipalities were given the opportunity to address intensification and the vast majority have chosen to ignore it. I believe there is only one municipality in Ontario that actually completed that a couple of years ago, and that was Hamilton. This legislation will ensure that planning departments plan for more than single families.

I've listed more specific reasons why we support the bill.

(1) The bill is cost-effective. Housing intensification is a cost-effective technique for developing more housing units.

(2) It is environmentally responsible. Adding an apartment in an existing house makes use of existing building stock and current services such as sewers, roads and schools. In addition, it will avoid greenfield development, thus creating more compact and sustainable communities.

(3) Seniors: The legislation will enable many seniors to keep their homes by helping to offset the cost of maintaining their houses.

(4) Shortage of affordable rental housing: Allowing more apartments in houses will not and should not be the answer to the lack of affordable housing. However, it is one of many solutions needed. Apartments in houses will add to the housing stock. These units are a necessary step in the right direction. More accessory units and an increased supply of non-profit housing will result in increased availability. This may result in some reduction of rent levels in the private market.

(5) Discrimination in zoning: Exclusionary bylaws or zoning in effect prevent people who can't afford to purchase a home from renting in a single-family neighbourhood. We believe this is unacceptable and we are encouraging the change. Due to changing demographics—smaller households, fewer nuclear families, immigration etc—there is a need for all kinds of housing types. Presently, these needs have not been planned for by municipalities.

Labourhood believes that zoning bylaws should not be used to govern who lives where. Certain neighbourhoods should not be reserved for certain kinds of people. Bylaws that restrict certain areas to single-family homes preserve privileged residential areas and make it illegal for anyone who cannot afford to buy a home or rent a whole house to live there. Usually, it is not the apartments which are protested, but the people living in these apartments.

Consequently, these inequitable zoning bylaws result in systemic discrimination against particular groups of people. The groups most adversely affected are those

needing protection under the Ontario Human Rights Code. For many reasons, for example, less access to economic resources or outright discrimination, these people are often excluded from lower-density neighbourhoods which are generally well served by community, education and recreational services.

Housing intensification will allow communities many opportunities to change existing neighbourhoods and to meet our diverse housing needs. This bill will allow housing needs to be sensitive to changing households, composition, size and diverse cultural norms and traditions. Bill 120 will allow society to provide accommodation for our aging population, low- to moderate-income groups and our extended families.

The elimination of zoning bylaws which discriminate against certain kinds of people and stop us from meeting our housing needs is an important and giant leap for the NDP government to be taking.

(6) Present zoning ignores realities and tenants' rights. Municipalities are quite literally ignoring the reality that thousands and thousands of people are currently living in illegal units. With the passage of this bill, tenants in over 100,000 units in this province will finally have access to the same rights that other tenants have struggled for.

Although there are organizations, particularly in the Hamilton area that I speak about, that call themselves housing activists, we refer to these organizations as housing deactivists. They believe there should be two standards for individuals and couples, one for people who are living in 500-square-foot or 600-square-foot apartments and one for people living in 700-square-foot apartments. Should the same rights not apply for all tenants living in apartments, as long as those units all meet the required health and safety standards?

Labourhood strongly believes that as long as the unit is up to the health and safety standards then it doesn't matter whether it's 500 square feet or 700 square feet and that the proponents of the 700-square-foot apartment are really only looking at a way to be exclusionary and to keep certain kinds of people out of their neighbourhood. They're not housing activists, they're individual activists.

Living in illegal apartments because of unfair zoning bylaws means that tenants live in legal limbo. The courts have been inconsistent on whether or not those tenants are covered under the Landlord and Tenant Act. As a result, tenants can be defenceless against a variety of problems in their units, including illegal rent increases, illegal evictions and property standard violations. Tenants in illegal apartments cannot make complaints regarding violations of health and safety standards; it is also the same inspectors who shut down illegal units.

Tenants who live in illegal apartments cannot rely on the enforcement authorities available to other tenants: the courts and municipalities. Consequently, tenants are forced to endure inadequate living standards and are unable to enforce their rights to privacy and freedom from harassment. Living in an illegal apartment can be living as a second-class citizen.

With the passage of Bill 120, the NDP government has recognized that no person should have to live as a

second-class citizen and in fact has provided much-needed security for tenants.

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(7) Rights of tenants to share accommodation: Labourhood supports the government's efforts to eliminate the practice of controlling where people live by regulating their relationship with their housemates. We believe that municipal zoning should not design neighbourhoods according to residents' relationships. Zoning must be according to the use, not who is the user.

(8) Additional protection in Bill 120: Extending protection to tenants whose housing has a care component under the Landlord and Tenant Act, the Rent Control Act and the Rental Housing Protection Act is a major step forward. There are thousands of tenants, mainly frail, elderly people, as well as former psychiatric patients and people with developmental difficulties, who have been denied the protection afforded by the laws of this province. These people have been very vulnerable to abuse by their landlords. However, Bill 120 will provide much-needed protection for these people.

Labourhood congratulates the NDP government for extending protection to these tenants. Hopefully, these tenants will have security of tenure, the right to privacy and the right to safe and healthy living conditions.

I would now like to list some of our recommendations for changes to the bill.

(1) We believe it should include meal costs in the definition of "rent" for tenants living in housing with a care component to ensure meals are subject to the regulatory provisions of the Rent Control Act. By not including meals in the total rent, it opens the door to a new kind of intimidation and exploitation of victims. In effect, tenants could be constructively evicted. As well, food could become a lever to keep tenants from making complaints or exercising their rights. Arbitrary increases in meals add little protection for those tenants most needing security of tenure, tenants who need protection from garbage bag evictions.

Providing information packages for new tenants before meal costs can be increased and 90 days' notice before an increase is valid will not be sufficient protection for many tenants, who will be unable to pay these unregulated costs, regardless.

(2) Include in Bill 120 guidelines for physical accessibility for apartments in houses. Further legislative amendments are also necessary to ensure that the needs of persons with physical disabilities are recognized with the legalization of apartments in housing.

Municipalities should be required to incorporate a physical accessibility assessment in any approval of a building permit for the creation of an accessory apartment in an existing house. If a proposed accessory unit can be made accessible, the home owner should be informed of funding that is available for making the unit accessible.

The Ministry of Housing should monitor accessibility of accessory apartments over the next two years. If intensification reduces the percentage of accessible units on the market, the ministry must ensure a higher proportion of accessible units is provided by non-profit housing

developers and Ontario Housing Corp.

(3) The Landlord and Tenant Act and the provincial government should be superior to municipal planning. A number of concerns arise with Bill 120 around inspections. Municipalities could institute a very vigorous inspection and close down units for very minor infractions or quite simple standards. Conversely, an equal concern would be if the municipalities decided to do nothing at all. If they refuse to do inspections, tenants will still have no recourse and no rights.

(4) Landlords should be required to register the rents of accessory apartments. Once the rents are registered, the rent control office should be required to send landlords information about their obligations under the Landlord and Tenant Act and the Ontario Human Rights Code.

(5) The Landlord and Tenant Act should be amended to require landlords of accessory units to give tenants 120 days' written notice for evictions resulting from landlords' own use.

(6) More resources to tenants' advocacy organizations: The government should put more resources into tenant advocacy organizations to expand their services so that they may provide community education, summary information and legal representation to accommodate the needs of tenants in accessory units and tenants in housing with a care component.

(7) This one might be a little radical for you. The Ministry of Housing should coordinate with the Ministry of Education and Training to institute education on the Landlord and Tenant Act etc throughout the high school system. Providing advocacy resources is not enough. If the government truly wants people to know what their rights are and how they can exercise their rights, it needs to provide real life skills to students in the classroom. This would be an extremely effective way of maintaining rents.

For example, if you educate through the high schools and other educational institutions, like English-as-a-second-language programs or adult basic education, to pass on what their rents are to the next tenant, what they paid, this would lessen the need for a rent registry. For instance, if tenants, before they actually move out, let the new tenant coming in know what they paid for rent, then the hundreds of thousands of apartments would have some kind of mechanism for people to know whether they're being ripped off or not, number one.

Number two, people need to know that there are health and safety standards that could be met and can be met and should be met and that there is a mechanism in our municipalities to get that done. That doesn't happen enough through tenant advocacy, and the only way we can really do that is if the government takes on active education and does that through the school system. That actually goes for health and safety, labour relations, employment standards, the Human Rights Code. Becoming an adult doesn't necessarily mean you just springload into knowing your rights and obligations under the laws of our province.

(8) That the government produce and distribute plain-language pamphlets in many languages for tenants to

increase awareness of the new legislation and its implications for tenants. Education for tenants on this new piece of legislation will be crucial. We all deserve to know what our rights and responsibilities are.

(9) That the government set maximum parking space requirements and that no additional parking for accessory apartments be required. The advantages of on-the-street permit parking should be seriously reviewed.

Municipalities need to be planning for people, not cars. We are a car-based society. Parking is and will continue to be a problem in all commercial and residential areas. Apartments in housing has not caused this problem. Tenants tend to own fewer cars than home owners.

I'd like to personalize this example a little bit. I live in downtown Hamilton in one of the highest density neighbourhoods in this city. I live in ward 2, which is in the centre of the city. I live in a single-family home, which I own. I have three cars in my family, my own, my husband's and my step-son's. It's a semidetached house. The house attached to me has three apartments in it and only one of the householders in that whole three-unit complex has a car. Suggesting that opening up housing to tenants necessarily doubles or increases parking is just a mechanism used by opponents of Bill 120 and intensification to fearmonger.

(10) That the government reconsider the one unit per house and allow for any number of units within the envelope of an existing structure as long as health and safety standards are maintained.

I respectfully submit this on behalf of the board of Labourhood Homes Resource Centre and I'm open to any questions anyone might have.

Mr David Johnson: Thank you for your presentation. I might just indicate that actually several municipalities have responded to the accessory apartments issue. We heard this morning that Etobicoke actually formulated a position and sent it along to the Ministry of Housing in 1990 and has yet to hear back from the ministry. You mentioned Hamilton as another municipality that has taken quite a position, and there are several others. We heard yesterday in Ottawa that five of the municipalities had taken a position and others were well on the way. So municipalities actually have responded.

I guess the ministry is saying that it hasn't done precisely 100% of what the ministry has felt should be done, but municipalities have reacted in their own way with their own policies considering their own communities, their own neighbourhoods, their own conditions, which vary from municipality to municipality, including Hamilton.

I wondered if you were aware of the group Citizens for Citizens—

Ms Randazzo: Very much so.

Mr David Johnson: —which has done a great deal of work in the city of Hamilton and appeared before us last week. You can correct me if I'm wrong, but it seems to be a group that involves aspects of the city of Hamilton. They looked at this question in the city of Hamilton and their recommendations were considerably different than your own. They were very concerned with homes being

purchased by speculators, not only with the impact on residential communities but the loss of business. They've indicated that because of what was happening, businesses were being forced to close in Hamilton and there was a quite a loss of business in that city.

Ms Randazzo: I'll comment on that first. Citizens for Citizens should really have been named Citizens for Themselves. The Citizens for Citizens use fearmongering about such things as businesses shutting down. As I said, I actually live in the neighbourhood of Citizens for Citizens, and I've lived there all my life. Actually, my great-grandfather built a number of the homes in ward 2 and ward 3. So I'm very familiar with Hamilton and know it is a falsehood to suggest that businesses are shutting down because of intensification.

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In fact, ward 2 and ward 3 have the highest level of illegal duplexes in the city. We estimate there are 10,000 illegal duplexes. To suggest that Bill 120 is actually going to create more in those neighbourhoods is false. What it will do is make those illegal apartments legal, and hopefully we'll be able to collect some increased taxes on them and make sure that those tenants have secure rights, number one.

Number two, Citizens for Citizens has very much used tactics of fearmongering, talking about parking, talking about different things. We have been active on the same issue with Citizens for Citizens since Hamilton started its intensification report way back in at least 1989. I have to say that Citizens for Citizens call themselves housing activists, but they do not participate with any of the other housing advocacy organizations in the city. They do not advocate that I know of; not at any one time have they advocated for housing. They only advocate to stop housing. I guess they would be more practically called "de-activists."

Labourhood is part of an organization called the Social Housing Action Committee, which has at least 40 different housing advocacy activists and organizations on it, including groups like the Kiwanis, the social planning and research council, the legal clinics, various other housing groups, the health council; the list is 40 long. We have been active in all housing issues, from non-profit housing to intensification to subsidies, and have been quite critical. We don't carte blanche support anything that comes along just because it's housing.

Citizens for Citizens, on the other hand, is only active around stopping housing, and it is really only in their own backyard. They really don't care about the mountain or the west end or the east end; they really only care about ward 2 and ward 3.

The Chair: Thank you. The time constraints require us to move on to the next person.

Ms Randazzo: Sure.

Mr David Johnson: That's all I get?

The Chair: That's all you get. I'm sure someone else will explore this further.

Mr Owens: I'm glad I have the opportunity to continue the discussion started by Mr Johnson with respect to downtown Hamilton. I don't want to misinter-

pret what the group told me while they were here, but my impression was that it was their philosophy that if there wasn't this thing called intensification their part of the world would be a glowing and bustling part of the Golden Horseshoe, notwithstanding any kind of major economic problems that the city of Hamilton is facing with the steel industry having some trouble and just general economic conditions around the area.

If the government decided to not do this, if we just decided to do what the other two parties have done and what municipal governments have done, which is just to shrug shoulders and turn a blind eye to what's going on, what kind of impact would you see in your community in terms of working people and those who used to be working? What kind of an impact would this have on their housing?

Ms Randazzo: It raises a number of issues. The fact of the matter is that this bill is not going to create thousands of new units; it's going to make legal units that already exist. Although groups like Citizens for Citizens do the fearmongering thing, that tomorrow every house on the street is going to be duplexed and there's going to be a biker in each house parking their motorcycle on the lawn, this simply is not going to happen.

Mr Owens: If not the living room.

Ms Randazzo: If not in the living room, right. This is simply not going to happen. One of our concerns about the bill is that by doing this it really doesn't create that much more affordable housing, number one.

Number two, the fact of the matter is that especially with the recession, people want to live and need to live where the services are: They need to live where the buses are; they need to live where the hospitals are; they need to live where the schools are. If you're a single parent with two kids and you don't have a car, you do not want to live out on Rymal Road in Hamilton; you want to live downtown, where you can walk or at least bus to different services.

That clearly has been the choice of citizens in Hamilton, because there are 10,000 illegal units in those neighbourhoods. People want to live there. People are going to live there. I'm not exactly sure what the impact would be, because the units are there. The difference would be the quality of life of the people who live in a lot of the units.

For instance, on this scaremongering about basement apartments, the fact of the matter is that thousands and thousands of people live in basement apartments. If we make them legal and make them part of the code, then the tenants who live in those apartments can phone up and say, "Excuse me, this apartment is not up to snuff," and not have to worry about being evicted. I think those are concerns that people who are worried about their property values don't consider.

Mr Owens: I appreciate your presentation and I certainly appreciate the support of the groups you've listed in your brief. My experience with labour is that we've been on the forefront in terms of the provision of housing both through the dollars and down to construction of that housing.

Mr Grandmaître: Let's go back to the number of groups that are being supportive of your organization. Can I ask you what the Hamilton district health council says about Bill 120?

Ms Randazzo: I can't speak on behalf of the Hamilton district health council. I can speak on behalf of their representative they send to Labourhood and her position.

Mr Grandmaître: Very good.

Ms Randazzo: On the Labourhood board we voted and it was unanimous in support of what I put as our support of issues in this document. So that would be their issue. They believe very much in a sustainable community. They believe in cost-effective ways of keeping communities healthy.

Mr Grandmaître: Do you know, for instance, if the district health council was consulted?

Ms Randazzo: You'd have to ask the delegate of the health council. She's their official representative. I can't speak on her behalf. I couldn't answer that. You'd have to ask her. I'm only the director of the organization making a brief on behalf of 15 board members. I assume that by the fact she's speaking at the table she has the authority to say what she says. I assume; I don't know that for sure.

Mr Grandmaître: I'm asking you that question for one reason and one reason only. I'm told that the district health councils in the province of Ontario were not consulted about Bill 120. That's why I was asking you.

Ms Randazzo: As organizations themselves they may not have been, but certainly that person sitting at our table has an opinion from the perspective of the health council, what she thinks about it. Maybe the health councils should be making presentations themselves to address that issue.

Mr Grandmaître: In your presentation, you put a lot of emphasis on tenant education. How about landlord education? This government is spending all kinds of money to provide tenants with access to regional offices for the LTA, Rent Control Act and so on and so forth. What is being done to educate landlords? I'm one of them and I've never received a letter from the ministry or the minister or this government, telling me that there's a course for landlords.

Ms Randazzo: I'd like to put that in perspective as well. First of all, I actually would have included, had I had another 20 minutes, issues on landlords. I actually do firmly support that landlords should be getting information and education, just like employers. Everyone should know their rights and obligations. Then I think half the problems wouldn't be there.

I would not suggest that all landlords are bad landlords, I do not believe that. I actually believe most landlords, especially in apartments in housing, are just trying to make ends meet, number one.

Number two, I know an awful lot of tenants, probably hundreds of thousands, have not got a letter sent through their door either, saying that these are their rights and obligations and there's an educational one for them. The money is given to organizations to try and advocate on

their behalf and reach those tenants, but let's face it, the hundreds of thousands of tenants in Ontario do not get notice of educationals about their rights either.

Mr Grandmaître: Would you say that a lot of them don't care?

Ms Randazzo: No. I would say, as I stated in my brief, that I believe if we put education like this into the high school system and adult education system, then this wouldn't even be an issue. You as a landlord wouldn't have to have a special school and I as a tenant wouldn't have to have a special school because we would understand our rights and obligations as both landlord and tenant under the act because it would be part of our education system.

The Chair: Thank you for appearing before us.

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SECOND OCCUPANCY STEERING COMMITTEE ON HOUSING

Ms Lorraine Katryan: My name is Lorraine Katryan. I'm the coordinator of the Second Occupancy Steering Committee on Housing, which is a subcommittee of the Scarborough Housing Work Group.

We are a community-based group of home owners, tenants and community organizations and we have a common goal of promoting housing intensification, and in particular the legalization of apartments in houses. We have been in existence since 1986 working on this issue.

We would like to applaud the provincial government for having the vision, foresight and courage to introduce Bill 120, to do the right thing despite some loud opposition.

Because of the focus of our mandate, I will only address the apartments-in-houses section of the bill, although we also support in principle the care homes section. We would also like to express our support for the comments already made by the Inclusive Neighbourhoods Campaign and the Federation of Metro Tenants' Associations, among other groups.

In some ways, it's very gratifying to actually be here and see this issue being looked at seriously. I'm proud to say that Scarborough is really the home of this issue. We have watched it from its inception grow and become a viable issue that is now put forward here for your perusal.

You have probably heard all the arguments that support the legalization of apartments in houses because it makes good planning sense. For example, the human face of those who need it: the home owners, many of whom are seniors; young couples; empty-nesters; families hit hard by the recession; families that want their aging parents or young adult children to live near them yet independently; single parents struggling to keep their children in the family home after a breakup.

Who are the tenants? Again, seniors, young people, students, new Canadians, people on social assistance, single parents, single people who don't want to live in high-rises, families and everyday people like you and me.

Beyond this, there is the broader community interest. Legalizing apartments in houses is one component of housing intensification which is a very important concept

that we in our growing, huge cities need to be realistically grappling with these days. Legalizing apartments in houses will help to prevent urban sprawl, help to preserve green space, farm land. It's a good use of the existing housing stock at virtually no cost through efficient housing intensification at a gradual pace that primarily fills the gaps rather than creating mammoth new subdivisions. In short, it revitalizes and regenerates communities. But this is not the focus I want to deal with today because you already know them, even if some of you choose to disregard them.

I would like to talk more about the experience that our committee has accumulated over the years, particularly in its dealings with Scarborough council, and our conclusions that much of the opposition to legalizing apartments in houses is based in simple, pure discrimination.

We would of course also like to commend the province for the courage to take this bold, progressive step forward, to stand for what is right and true and meet the needs of the real people. They have succeeded in bringing forward a vulnerable, silenced segment of society who are forced to live in illegal situations, even under extreme antagonism in front of irate, irrational ratepayers and antagonistic council members.

I'd like to reiterate one point that seems obvious but seems to be often overlooked: These apartments exist, they are needed, they will continue to exist and they will continue to be needed whether or not any government chooses to recognize them. People have a basic ability, often, to meet their needs, even if it has to be through underground economies.

We all need to face this reality now and stop kidding ourselves by pretending that planning has done its job sufficiently. Many people were not planned for and did not count when municipalities planned their growth, and it's these people who didn't count before who have therefore been forced into these illegal situations because of lack of money, because of the recession and lack of other options. We are now giving this government the opportunity to finally plan properly for the future and for their neglected constituents in order to ensure that the appropriate rights and regulations are firmly in place. If municipalities want to thrust their own constituents out into the cold, where on earth, I ask, will they put them?

People who are opposed to this issue tell us that we need municipal control here and that the province should keep its paws out of municipal business, but this rhetoric belies the real truth. This issue has always been in municipal hands, but what have they done? They have refused to pay attention to what their own constituents need and have preferred to hide their heads in the sand. Now we are at the stage where we need the province to step in and enshrine the basic protections for people. Many municipalities have studied this issue to death, with plenty of provincial funding, yet they still have refused to do anything and have neglected their responsibilities.

The Second Occupancy Steering Committee on Housing, or SOS as I'll refer to us, is in a rather unique position in that we have studied this issue very closely for many years and have seen first hand how a municipality will procrastinate and evade the issue, manipulate

due process, and how they are quite prepared to listen to a hysterical minority of the population while disregarding the real needs of real people. They have made a mockery of the system and it is a farce to argue that the municipalities are closest to the people. To that I ask, which people? Only the rich who want to hoard resources for themselves and who are used to screaming the loudest?

I'd like to brief you a bit on the experience that has happened in Scarborough, but bear in mind that through talking with other community groups, it has become clear to us that our experience is by no means dissimilar from what happens in other municipalities.

It's important to realize that municipalities are ranting and inciting hysterical, irrational reactions and fear-mongering in order to clutch on to a power they themselves have abused. Fear has been instilled in many home owners and tenants by threatening the very home that they have and through antagonistic public forums that favour only certain voices.

Scarborough began several years ago by attempting to have a study on basement apartments done. They hired Frank Lewinberg, who I understand will also be speaking here. When they didn't like the results of his study because he was leaning towards favouring legalizing apartments in houses, they pushed him into resigning. They wanted him to change the results of his study, which he refused to do.

The city then took it on and held public meetings in all wards. Many councillors produced inflammatory and anti-tenant stereotyping and were very intimidating of supporters of apartments in houses. For example, there was one public meeting where a councillor was egging on the opposition, and they were almost the only ones who had a chance to speak up, but when he called for a show of hands of who was supportive of legalizing and who was opposed, it was about half and half. Yet those who were supportive had no opportunity for their voices to be heard. They were afraid of having their units closed down and they were afraid of the antagonistic atmosphere in the meeting. This was typical.

When the staff report was finally completed on this study, council then tried to bury the report by just receiving it and filing it away and doing nothing about it. We saw this as a sneaky, cynical move where they intentionally changed agenda items when most of the audience, the media and many of the councillors were not present for the vote. Yet this is a study that cost approximately \$120,000. They were trying to say to their constituents that they did not have the right to even hear the results of this report.

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A public outcry arose and they decided to reopen the issue finally. They decided to have one public meeting; it started out the entire city. However, nine out of 14 councillors one by one autocratically decided that their wards should be excluded from that public meeting because they "knew" their constituents were not interested in having basement apartments legalized in their wards. Finally the public meeting happened for five out of 14 wards. The councillors used intimidation and scare tactics with the residents and groups in favour of legaliz-

ing. They cross-questioned each speaker, sometimes leaving them up there for over an hour, asking them antagonistic questions and legalistic, technical questions that led one resident to say that the next time she came before Scarborough council, she would have to make sure she had her law degree first.

The meeting went to midnight. There were still a dozen supporters waiting to speak. Finally, it had to be deferred over to a second meeting. That meeting was similar and went to 3 am.

Finally, at the end of that meeting, what did we have? We did make progress. There was a vote for one ward in the whole city to begin the process of legalizing apartments in houses, and that was because that councillor, Marilyn Mushinski, was very supportive of the issue.

In summary, council's treatment of local residents and community groups was appalling and clearly designed to discourage, embarrass, harass and scare any speaker in favour of legalizing. One councillor even called one of his constituents at home and threatened her.

We have also talked to a number of home owners in several municipalities who have been harassed by their local inspectors for having illegal apartments. Regardless of how safe it really was, they were harassed by overzealous municipal inspectors who followed the letter of the law, thereby making life miserable for the home owner who relied on this income for the apartment, and threatening to remove the home out from under the tenant who was left completely in limbo with no rights.

We know municipalities don't want to give up their power base, but we think the time has come that the province must step in and ensure the rights of the people who really need this housing.

Let's get down to what the real issue is here. It's discrimination. There is a cynical attempt by the privileged few to keep certain groups of people out of certain élitist neighbourhoods, groups that are being scapegoated for all the societal problems of the day. We've heard countless comments by irate residents and ignorant municipal councillors over and over again that are blatantly racist, sexist, classist and anti-tenant. While many of the arguments against legalizing are often couched in polite planning terms or such misleading statements as "the preservation of the single-family neighbourhood," these are really polite ways to mask the real agenda of zoning apartheid: keeping "those people" out.

A favourite one is parking and services. A small minority of the population, who are even less likely than most to have cars, get blamed for the parking problems that really are caused by an excessively car-dependent society in which many people aspire to own their own cars and in which many well-to-do families often have several cars.

With regard to services, a small segment of the population that lives, belongs and has always lived in the community gets blamed for poor municipal planning and for the natural rise and fall in the birth rate, even though they are often just repopulating homes in areas in which the density has dropped anyway.

However, opponents to apartments in houses would rather see these tenants and home owners displaced from their homes and communities and dumped into the streets and the already bursting-at-the-seams shelters instead of using up excessive housing space. But I ask, do we ever hear these same opponents trying to evict the wealthier families down the street who have several cars, a swimming pool and a Jacuzzi and who use much more than their share of the services, but own their homes? Do we ever hear the opponents trying to evict the white families who have a houseful of children for overcrowding or charging them extra taxes for the increased services they use? No, nor should they be.

But why the selective blaming and the attempts to cause only certain kinds of people to become homeless? Why only the ones with less money and resources, who are more likely already to experience discrimination and hatred in this society?

We find it odd that the Liberals and the Progressive Conservatives, who normally encourage free market enterprise and solutions that emerge naturally from market forces, take such an unusual position opposed to these apartments. These apartments exist because people need them and are resourceful and independent enough to find their own solutions that harm no one.

In conclusion, it is our goal that no tenant or home owner shall ever in this great province of ours be forced to live in fear as a second-class and less-important citizen. This government has seen fit to redress this. This bill means that everybody matters and that everyone gets to play equally and fairly on the playing field regardless of who owns what.

Mr Owens: Lorraine, welcome to the committee. After four years of our meeting and going back and forth on this issue, we finally are at the point where we can look forward to having a bill that will take care of the people you describe as being discriminated against.

The opponents of this particular piece of legislation said that what the province is doing is trampling on the rights of municipalities to make their own zoning decisions, their own planning decisions. I think what you've described for us, however, is a process where the city of Scarborough—I think you quite diplomatically described the process that the city of Scarborough went through and the kinds of reactions that these elected officials had towards their ratepayers, whether they were living in single-family dwellings or in basement apartments.

Could you tell the committee perhaps in a little bit more detail about some of the other meetings and the kinds of things you and your group and your tenants have had to go through to try and get the municipality to do what it says it wants to be left alone to do, but have not done to this point?

Ms Katryan: I'm sure I could stand up here all day and talk about the experiences we've had with our local council. Rather than getting into greater detail, I will just summarize that it's been our experience that councillors have perceived what they consider to be the more important constituents to be opposed to basement apartments, and have refused to look at the many polls that have shown between a two-thirds and three-quarters

majority of the population in favour of legalizing. What they have done is that they have listened to a small minority who happen to be richer and have more resources and have refused to listen to people who own and people who live in these apartments.

There's a story where we were trying to point out to a local councillor the amount of fear that existed in people who wanted to come forward but were too afraid to. He told us a story about a friend of his who had an illegal basement apartment. He invited the friend to the public meeting in his ward and the friend said: "Oh no, I wouldn't dare go. I might have an inspector follow me home afterwards and force me to tear out my apartment." The councillor laughed and said: "Don't be silly. That's ridiculous." Yet the home owner didn't go, and he had the personal assurance of his friend, the local councillor, that this would not happen. That's the extent of the fear that exists.

Mr Gary Wilson: Thank you very much for your presentation. It's very graphic and I think sets out very clearly the reasons why this bill should be supported. I'd like to ask you, though, about a couple of things we've heard. One is the need for owner occupancy being one of the conditions for a second apartment.

Ms Katryan: I think this is a red herring that is being waved around a lot these days. The point of this bill is that tenants need their rights protected; home owners need their rights protected. If only certain tenants get their rights protected, then you're setting up a dual class system.

There's also the presumption that tenants will be bad neighbours. Anyone can be a bad neighbour and anyone can be a good neighbour. Perhaps we need to be looking in our municipalities and our communities for better ways to deal with bad neighbours. But to presume that a tenant is going to be a bad neighbour, or a worse neighbour than a home owner, is clearly discriminatory and one that we would not support.

Mr Eddy: Thank you for your presentation bringing out some facts. We haven't heard from Scarborough city council, I don't believe, but we did hear from the Scarborough fire department this morning. I noticed in your presentation that you said something about following the letter of the law. I'd like to ask about some of the safeguards for the residents if apartments are legalized.

The recommendations of the fire department were about access, grade level and exit in case of fires because of the problems of going through other accommodation, and many other matters such as wiring and that sort of thing. I tend to think there aren't halfway measures here, that your wiring is really either adequate or it's outdated and should be replaced, like mine, and so many other things: the fire code. They were asking for some changes.

Also, there was right of access in some way, and not going through a search warrant, which is a very awkward thing and isn't the purpose of the thing, to make sure that apartments meet the requirements of the fire code and the building code; access and those sorts of things. Would you comment on that? It's the safety aspect that I'm really concerned about.

Ms Katryan: We're also very concerned about the safety aspect—

Mr Eddy: I was hoping.

Ms Katryan: —and that's certainly one of the reasons we've been working on this issue so long and so hard. It's our understanding, and we've been told by many officials, that fire inspectors have complete right of entry and that people do not have the right to turn them away. It's the zoning and building inspectors who do not have the same kind of absolute right of entry; nor do the police, for that matter.

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Mr Eddy: Without a search warrant type of thing.

Ms Katryan: Right. However, I would put back the question to you. What tenant, who has an inspector come to the door and say, "I want to make sure your unit is safe; I would like to check it for you," would turn them away? So I don't understand why there's even a need for broader rights of entry than already exist.

Mr Eddy: In fact, that was a response this morning: Who would turn anybody away when it's an inspection from a safety aspect? But apparently there are people who do that, who say, "No, you do not have right of entry and we will not give it to you," so they have to go through the only way now, obtaining a search warrant, apparently, to gain access. I think there should be some easier way if it's the safety provisions of the living accommodation of families in basement apartments or indeed any type of apartment.

Ms Katryan: I hope then we would all recognize that by granting greater powers of entry this would not only apply to people in apartments in houses, but this would apply to those of us who are home owners who perhaps don't have quite up-to-date wiring.

Mr Eddy: Agreed.

Mr Daigeler: I'm just wondering whether you ever ran for office yourself. I'm asking that question because I feel that in a democratic society, if you have a disagreement with elected officials, you try and get yourself elected rather than try and eliminate that level of government. I'm just wondering whether you ever presented yourself for office.

Mr Katryan: I'm sorry, I have no interest in running for elected office, but what we do find is that tenants are largely typically ignored, particularly by local municipal councillors and often their buildings are not even canvassed during election time at all.

Mr Arnott: If this bill passes, Bill 120, and basement apartments are suddenly legalized, do you think there will be more basement apartments within six months in Ontario than there are today?

Ms Katryan: To refer to Scarborough's own study, the report done by its planning department, there was no evidence to indicate that the number of apartments in houses would increase at any greater rate than they already are, which is at a fairly slow rate—approximately 200 a year, I believe they quoted—which doesn't, of course, count the units that are also coming off the market.

Mr Arnott: Scarborough would probably have more basement apartments, say, per capita based on population than many other communities across the province. I don't know where it would rank. Would it rank towards the highest?

Ms Katryan: I don't know that.

Mr Arnott: I wouldn't think it would be typical, let's just say.

Ms Katryan: Scarborough's study estimated about 14,000 units, with a population of over half a million.

Mr Arnott: I guess if you assume that there will be no significant increase or that there will be no greater increase than there is normally, you're assuming that literally no one who wants a basement apartment doesn't have one and you're assuming that people don't respect the municipal zoning laws.

I have a feeling that some people will have desired a basement apartment in their house and checked into it and found that it was not legal and therefore didn't move ahead. When this bill passes, a considerable number of new basement apartments will suddenly appear, beyond what we're expecting.

Ms Katryan: I don't think that's a realistic expectation. I think some will come on stream, but in essence, the people who have wanted them, many of them, have already put them in. Who is going to populate them? The people are already here. We're not going to get a sudden population explosion because people in some far-off corner of the world hear that, "Aha, Ontario has legal apartments in houses." I really fail to understand the argument that we'll be suddenly duplexing Ontario and doubling the population.

Mr Arnott: I wouldn't expect the population would double, but I find that some people who are espousing the concept of this bill, and I think you include it in your presentation as well, have suggested that this would limit the urban sprawl that's already occurring and would promote intensification. That would lead me to think that there are going to be more people in basement apartments, as opposed to a constant number, after this bill passes.

Ms Katryan: I can only again refer back to Scarborough's study, which estimates that there will not be a sudden explosion of new apartments in houses, as well as other cities that have legalized them throughout North America, where there was no sudden explosion. The principle of housing intensification looks long term and over several broad principles.

The Chair: Thank you for appearing today.
NEIGHBOURHOOD LEGAL SERVICES

Ms Esther Ishimura: Good afternoon. My name is Esther Ishimura. I'm a community legal worker at Neighbourhood Legal Services. Gil Brereton is an intake community legal worker, also at Neighbourhood Legal Services, and Bob Ninham was a tenant at one of the buildings we're going to talk about today. He'll make a little presentation as well.

We're really here today to support very strongly the changes in Bill 120, especially those that deal with the care facility and the present exemption under the law. We

do not really want to deal with the legalistic arguments. I'm sure you've heard those. Instead, we want to give some case examples which illustrate why it's so important to make this legislative change.

We deal all the time with people who come in who have been evicted summarily, who have been charged high rents and we've been unsure of what to tell them, because when their landlords claim they're a care facility, we're not sure what the courts are going to say. At this point, the law is very unclear which facility is exempt and which is not.

I want to bring a couple of cases to your attention. One was in a non-profit sort of apartment house. It was run by people who had a religious connection, I'll say. There was some care being given at this rooming house, so it's quite likely it would have been exempt under the law.

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The tenant who moved in, though, thought that he was just contracting for housing. He got a self-contained unit. He knew that he was paying for food, but after a while when he'd been there he received a pamphlet which told him what the rules were. The rules included that he was supposed to go to common meals, that he was supposed to go to weekend retreats and that he was supposed to go to prayer meetings. He didn't, and after a while there were problems and discussions about the fact that he wasn't participating properly in communal life.

Then, about a year after, he was admitted to the hospital for a couple of weeks and found out that he'd been evicted while he was there, and there were no court papers. So we had a landlord who was using the "care" exemption as a way to evict tenants who were not fitting into what they thought was the proper communal life.

We have another example of a landlord who runs a for-profit rooming house in our neighbourhood, which is in the east end, around Sherbourne. This rooming house has about 13 rooms in it. It advertises on the entrance just rooms for rent.

This was also a case where someone was evicted. He was arrested and put in jail for a couple of weeks. As soon as the landlord found out that he was in jail, he immediately locked his room and rented it to someone else and put his belongings in a garbage bag in the basement. Again there was no court process, and when we contacted the landlord he said there didn't have to be one because he was a care facility. Our client had never gotten any care and never thought he was going to get care. He had just rented the room.

Gil will tell you other examples of what happens at that particular rooming house, because we've had a whole number of people who have come to us from them. As well, Bob also stayed for a time at that place and perhaps he can tell us what happened to him.

Mr Bob Ninham: When I stayed at the Salvation Army, and I wanted to get out of that place very badly, I was approached on the street by one of the people who work at 180 Sherbourne. She asked me if I was looking for a room. I told her I was. So I took it to my welfare worker so I could get out of that Sally Ann. I was never notified that this was supposed to be a care facility and

I was assuming I was renting this room for myself.

I was in about two weeks and the next thing I knew some other guy came into my room. I asked what was going on, and that's when they told me this was supposed to be a care facility, so they were renting the bed to me, not the room to me. I was never reimbursed.

Ms Ishimura: Bob stayed there a number of months, and every month he and whoever was put in his room all paid \$400 each for the room. As well at that place a number of people paid the rent, and then they would leave because they didn't know why these other people were sharing with them. Their money wasn't reimbursed either. So this becomes a very lucrative way to make money if you can charge \$400 by the bed and have a high turnover constantly in the place and not refund anyone and just evict them if they complain.

Ms Gil Brereton: I've seen many tenants who reside at the rooming house Esther referred to. Two tenants came to see me. One had paid a full month's rent the day before. The morning he was in my office he had been thrown out at the whim of the landlord. No part of his rent was returned to him, and he had nowhere else to go to live.

Another tenant paid a full month's rent and found out he would be sharing one room with four other occupants. He did not realize this was the accommodation he had rented. He thought he was going to get a room for himself and no one else sharing it.

As I said, both these tenants did not receive back any part of their rent that they had paid and they had nowhere else to live. They were on government assistance, and because the rent they had paid came from their government cheques, they were forced to go back on the street or into hostels and wait until their next assistance cheque to find any alternative housing.

The other tenants I have seen reside at Keith Whitney. They are also being evicted at the whim of a landlord. One was evicted because he allegedly caused damages in the amount of \$59 and did not have the money to pay for it, so he was thrown out. Another tenant was evicted because they did not like the guest that she invited to her room. Again, as I said, all these tenants had nowhere else to go. They ended up in hostels or back on the streets.

The difference between these tenants and the tenants who reside in premises that are protected under the Landlord and Tenant Act is we can go to court and argue on behalf of tenants who are protected, but we can't argue anything for the tenants who are not protected. We can negotiate with landlords for tenants who are protected but can't do any negotiating on behalf of tenants who aren't protected.

These are a few examples of the cases that I have seen; there are many others. A lot of tenants do not come to us because the law is unclear and we can't assure them that we can get them back into their premises or get any part of a refund or all of the rent that they have paid. Unfortunately, these were homes for these tenants and now they are forced to go back to where they were in the beginning, before they rented what they thought would be a permanent home to them.

At the premises, the rooming house, the tenants did not receive any care. The tenants I have seen said they did not know it was a care facility. They did not see any services being provided by the people at this rooming house.

Ms Ishimura: So in our experience, whether in fact a place is a care facility and so should be exempt under the present legislation, we still see by the behaviour of some of those landlords that we don't want those places exempt. The other examples are places that are pretending—to some degree are not—to be what they're not and just using that exemption. For either reason, we very much support the changes that we see coming so that the situation will be very clear and only in a very limited situation will people be able to use that exemption.

The only other thing we would like to comment on just very quickly is something that's missing, and that's just a further protection for roomers that we're concerned about. The bill does not talk about rooming houses and, more importantly, what happens if a landlord loses his licence for a rooming house. What will happen to the tenants? At this point, the city could theoretically go in and close the building down.

We would like, in the same way that there's protection being given to granny flats, to see that there be protection of all types of housing: more importantly, to the tenants. There may be sanctions that have to go against the landlord, there may be repairs that have to be made, but the tenant should be protected while that's happening. Somewhere in the legislation add something that says that no tenant would ever lose their tenancy just because a rooming house wasn't legal for a time. That's all.

The Chair: Thank you. You are prepared for questions now?

Ms Ishimura: Only if they're nice.

Mr Grandmaitre: I agree with you that roomers and care facilities should all be regulated and operating under one law. I realize that there's a good number of landlords that are exercising their own law and their own eviction laws. These tenants should be protected.

Let me ask you, Bob: You said that you wanted to get out of the Salvation Army badly. Why badly?

Mr Ninham: Because of the people who lived there. It was a hostel and the kind of people who lived there are not the kind you want to hang around all the time.

Mr Grandmaitre: You didn't feel you were secure?

Mr Ninham: Leave a pair of shoes on the floor, the next morning there might be only one there. Believe me, it's that bad. There are a lot of drug addicts in there too.

Mr Grandmaitre: I'm going to go back to, let's say, the private operators. I know they should be regulated, but do you think they should come under this bill? Because they do meet all the necessary requirements of Bill 120. I'm thinking of where there's lodging and food and care, because these people will now have to pay, let's say, to be a resident and will have to write a second cheque for their food in order to protect their tenure. Do you follow me? These people will be paying GST and provincial sales tax on their food. Do you think that's fair?

1510

Ms Ishimura: My concern is that all of the tenants have the right not to be evicted summarily.

Mr Grandmaître: Agreed. Agreed.

Ms Ishimura: That's mainly what we were discussing.

Mr Grandmaître: I'm talking about private operators, those who are respecting the law.

Ms Ishimura: Those who are respecting the law won't have any problem by being covered by the law.

Mr Grandmaître: These people are operating within the law, are regulated by the province of Ontario, but they do receive one monthly cheque for food and care combined and they don't pay any GST. But now under this new bill, these people will have to pay GST.

We were talking to people who were paying, let's say, \$2,000 a month because that's their lifestyle. They've saved and that's the way they want to live. A lot of them are over 80 years old. They say, "Why should I be taxed an extra dollar?" or something, but quite a bit for food. Right now, care, food and their lodging—everything—is included in this one monthly cheque. By dividing the cheque, they will now have to pay GST. I think it's very unfair. Very unfair.

Mr Gary Wilson: Are you sure about that?

Mr Grandmaître: Oh, yes. They will be paying—

Interjections.

Mr Grandmaître: Am I addressing these people or—

The Chair: No, you're not. For the moment, pretend they're not there. They have their turn later.

Mr Grandmaître: I just want to remind them.

The Chair: Your conversation is to be with the presenters.

Mr Grandmaître: Yes. Keep this in mind, you guys.

Ms Ishimura: I'm sorry. This is not a point that I can lend any clarity to.

Mr Grandmaître: But I do agree with you that all rooming houses and lodging facilities should be regulated, because a lot of people are taken advantage of. A lot of landlords are taking advantage of that situation. I do agree with you.

Ms Ishimura: I think everything should be regulated and all the tenants should be protected. If there's a problem with the food, that's a separate little problem.

Mr Gary Wilson: Mr Chair, may I, through you to Mr Grandmaître, offer this—

The Chair: Mr Wilson, you have an opportunity later.

Mr Gary Wilson: Just to clarify—

The Chair: No, you have an opportunity later.

Mr Grandmaître: You want to see me outside or what?

The Chair: Mr Daigeler.

Mr Daigeler: Actually, I am prepared to give some of my time to Mr Wilson if he has an answer.

Mr Gary Wilson: Great. Thank you very much, Mr Daigeler. I would like to ask Scott from the ministry to come forward and talk to this issue about the charges

there are now, the GST provisions.

Mr Scott Harcourt: I'm Scott Harcourt from the Ministry of Housing. With regard to taxes, our understanding is both the federal GST and Income Tax Act would have to be changed before residents would have to pay taxes. As both of those statutes read now, in fact, they would not be charged taxes either under GST or under federal income tax.

Mr Grandmaître: Can I get this in writing? I'll tell you why. Because your own ministry in Ottawa last week, at Rideau Place—I can give you the address: 550 Wilbrod—said, and they brought this up. I was very surprised. I never talked about GST. They brought it up.

Mr Harcourt: It has been a concern that some of the rest and retirement home operators have come up with. Their concern is that the federal government will in fact change their legislation in order to charge taxes on this.

Mr Grandmaître: Could you provide this committee with some sort of a written note?

The Chair: Thank you. I'm sure the ministry will provide us with something in writing during the clause-by-clause examination so that we understand this matter. Mr Arnott.

Mr Arnott: Thank you very much for coming in today and presenting your views. I don't have any questions, but thanks once again.

The Chair: Then we have Mr Owens.

Mr Owens: I sit here listening to presentations like yours from NLS and from the members of the community that NLS would represent, and I can't help but shake my head when I think about the opponents of this legislation, especially with respect to the care home issues.

I think that what the government should have done was provide copies of Pat Capponi's book, *Upstairs in the Crazy House*, for people to read as briefing material, so that people have a clear, clear understanding of the kinds of conditions that people are forced to live in, with absolutely no rights, no means to a remedy in any way, shape or form that we would view as our rights in this province. So I want to thank you for your support and your recommendation with respect to rooming houses.

Mr Gary Wilson: Of course, adding to Steve's source, we have Ernie Lightman's report too that so graphically describes some of the appalling conditions that we're trying to correct through this legislation. Of course, it's the basis of the part of Bill 120 that applies to care homes.

I would like to ask you about a couple of things. One is whether you've given any thought to an issue that's come up here, and it's been referred to as fast-track eviction. The concern appears to be that there are cases where, as the legislation is outlined now, it could present a problem for the operators of homes because of issues that arise where a tenant can be a threat both to himself and other tenants. I was just wondering whether you've thought about that and whether you might be able to offer some thoughts about what we could put in the legislation to address this issue.

Ms Ishimura: I guess our concern about fast track is

that it's a problem that's not just applicable to the people whom we're dealing with today; it's a problem that's everywhere. If there's a need to fast-track evictions, and there may be, then I think it would be a general legislative change to the Landlord and Tenant Act, for example, that would apply to all tenants, so that it would have a process that would affect everyone.

A lot of tenants we deal with who are not protected, who are in these care facilities, are in self-contained units—maybe they share a bathroom, maybe not; maybe it's completely self-contained—and very often there are not big differences between their type of housing and the type of housing of the people who are already protected under the Landlord and Tenant Act. There's no particular reason to make a special fast track for these types of situations.

As well, I think there are other laws that already exist. There are police who can be called, there are inspectors who can be called. If there's an emergency anywhere, whether someone has a knife in the hall in an apartment building or in a rooming house, you have to do something. It's the same situation.

So either I would suggest that people can rely on the present laws or in fact we might look at something that would benefit all the tenants across the province.

Mr Owens: We already have fast-track eviction processes: "Here's your garbage bag. Take your belongings and get out."

Mr Gary Wilson: I'd like also to ask you about another thing that has been raised, which is the access to rooms, where the concern appears to be that operators won't have access to rooms where the tenant might have problems, that if they have to follow, as they see it, the provisions of the Landlord and Tenant Act, it would mean that they couldn't respond to emergencies. Could you comment on that situation?

Ms Ishimura: I think the act is clear that you can respond if it's an emergency. So I'm not sure why, particularly, the operators are concerned. I think they will, if there's a genuine emergency, be able to get in. I think if it isn't, then they will be limited. A lot of them may find that a problem because a lot of them go in quite frequently to check on all kinds of things, but I think the tenants will appreciate that being restricted. But again, if there's a real emergency, they'll be able to get in.

Mr Gary Wilson: You don't see that as a problem then?

Ms Ishimura: No.

1520

Mr Gary Wilson: Also, I'd like to speak to your concern about the loss of rights, the concern that tenants would have of course if a rooming house lost its licence. It appears where it's a rooming house without any care services, it already is under the Landlord and Tenant Act, so there would be the provisions that exist there. A licence simply couldn't be lost; they would be able to speak. There would have to be provisions made. If they were a care home, under the legislation as it is proposed, they would fall under the Rental Housing Protection Act, and it couldn't be taken off the market through a land-

lord's wish to remove it from the care services. So the tenants are protected in that way.

Ms Ishimura: I think there's some question about whether, if you lose your licence and it becomes an illegal rooming house, is it protected, or not under the act. I'm not sure that it's clear enough.

Mr Gary Wilson: Are there care services involved in this?

Ms Ishimura: No.

Mr Gary Wilson: We'll consider that. Scott, have you anything more?

Mr Harcourt: No.

Mr Gary Wilson: Okay. We'll take that under consideration. Thanks very much for your presentation.

The Chair: Thank you very much for appearing before the committee today. You've brought us a different perspective I think than we've heard, at least in the last little while.

Mr Daigeler: Mr Chairman, since we have a little bit of time before the next presenter, could I ask the parliamentary assistant something? At the beginning of the hearings, I asked ministry officials, when they made their presentation, whether we could have something in writing on the response of the municipalities to the housing intensification policy by the previous government, and I was assured that we were going to get something. We haven't received anything and I'm just wondering whether that is still coming or not.

Mr Gary Wilson: I'm sure it's on its way. I'll look into that to find out when it will be here.

Mr Daigeler: Several times, reference has been made to the compliance or non-compliance of the municipalities, and I certainly would be interested to see precisely what has happened.

The Chair: I take it that the parliamentary assistant has committed the ministry to provide that to us.

The Chair: Are there further points of interest? If not, we'll call the next presenters. They have been here for some time, the Massey Centre. Members would note this is a substitution and it's pursuant to a motion made yesterday.

Mrs Margaret Marland (Mississauga South): By whom?

The Chair: I'm not sure, Mrs Marland, but I would tell the presenters that it was unanimous.

Mrs Marland: I wore the same suit so you'd recognize me today. Anyway, I do appreciate the committee accommodating this group. Thank you, Mr Chairman.

MASSEY CENTRE FOR WOMEN

Ms Nancy Peters: Thank you very much. My name is Nancy Peters. I'm the executive director of Massey Centre for Women. I have brought with me today Joan Campbell on my right, she's the president of the board of directors, and on my left I have Monica Auerbach, who is the director of central services. We'd all like to take this opportunity to thank you for hearing what we have to say about the impact of Bill 120 at the Massey Centre for Women. Joan will be making an initial presentation and then we're all available for questions.

Dr Joan Campbell: It's been most interesting listening to the presentations before us. I've learned a lot.

Our intent is not to attack Bill 120, because I think there are many valuable parts to it and it addresses very serious problems. Our concern is that we are a unique organization whose very existence is threatened by this legislation, I think inadvertently. I don't think anybody wants to kill us, but certain provisions of your bill would make it impossible for us to continue to operate.

I want to explain a little bit first about the Massey Centre for those of you who are not familiar with what we do, and then I want to sum up what I see as the impact of the bill and what we need to continue to operate.

Introducing the Massey Centre: The Massey Centre for Women is a multiservice complex that provides a secure environment within which young single women can bear healthy infants, learn to become good mothers and gain the maturity, the education and the skills needed for them to become independent, self-supporting heads of families.

Thanks to the successful completion of a major expansion project in 1992, with funds from the Ontario Ministry of Housing and the Toronto United Church council, what was originally a traditional maternity home—it was called Victor Home in those days—has been able since 1992 to offer supportive and transitional housing to young mothers. This was made possible by Project 30,000 funding at that time. The whole plan was conceived in those terms as transitional housing and would never have been built in the first place if it had not been for the provisions of that portion that gave us exemption from the Landlord and Tenant Act.

The residential complex at the Massey Centre can accommodate approximately 50 prenatal and postnatal young women at any one time. The residential programs are offered in three phases: phase 1 houses 22 prenatal women who are waiting to have their children; phase 2 consists of 10 closely supervised one-bedroom units where new mothers and their infants can live for a period of up to six months; phase 3 enables 17 single mothers and their children to stay on for an additional period of up to two years while they finish their schooling or otherwise ready themselves for independent living. A staff nurse is available on call at all times.

In addition to its residential facilities, the Massey Centre owns and operates a 48-place day care centre and a parent-child resource centre that serves nearly 200 families every month. It also houses a section 27 school run in cooperation with the East York Board of Education, and it runs a young mothers' employment program that offers employment and career counselling. All these programs serve members of the community as well as the resident mothers and their children.

While many of the centre's programs are funded in whole or in part by government agencies at all levels, notably by the Ministry of Community and Social Services and by Metro, the Massey Centre could not exist without substantial support from the private sector. To repay moneys borrowed from the United Church for the expansion project and to cover the operating costs of its innovative quality services, it depends heavily on annual

donations from the church, foundations, corporations and private individuals.

Today's Massey Centre is an outstanding example of what can be achieved through interministerial cooperation—Housing, Community and Social Services, Education. Its focus on prevention and early intervention is in line with the latest policy directions of both the Ministry of Community and Social Services and the Ministry of Health, with which we work in close contact through the district health councils.

The centre enjoys a wide and growing reputation and many have come to regard it as a model to be copied throughout Ontario and North America. A great deal of credit for this must go to the new supportive and transitional housing facilities which have been operating since 1992. These enable the centre to provide young single mothers with the time needed to learn to become good parents and to gain the strengths required if they and their children are to escape from the cycle of poverty, violence and abuse that faces many people in their situation. All this we believe is threatened by Bill 120.

1530

I want to say something about the rationale for transitional housing at the Massey Centre. The 17 town house units in particular, what I called phase 3, were built with the help of the Ministry of Housing as supportive transitional housing and therefore were exempted from the Landlord and Tenant Act. This exemption played a role in obtaining permission to build the housing, which was only given in 1990 after an Ontario Municipal Board hearing was satisfied that the new residences posed no threat to the neighbourhood.

The average age of the occupants of these town houses is 17, but quite a few of the mothers are very young. They are there because they do not yet feel ready to live on their own and to parent a child while doing so.

Throughout their time in residence at the centre, every effort is made to link the young women with community services and to prepare them for independent living. As soon as occupants of the town houses feel they are ready to go out on their own, the centre encourages them to find suitable accommodation in the community and helps them to do so.

Young mothers in our view have the right to decide for themselves whether they wish to live at the centre. If they opt for residence, they are fully aware that they must abide by the centre's rules. This may be quite difficult for some of them to accept. Some of them have never accepted rules in their lives when they come to us, but they go into that believing that what we have to offer makes it worthwhile sacrificing a certain degree of their usual independence. When a young mother applies for a town house, she knows what these rules are and accepts that there will be certain conditions and restrictions if she gets accepted. They have the choice of living in the community and still accessing many of Massey Centre's programs and services, so they don't have to go into residence to be part of the Massey Centre community.

The existing regulations for residents are quite generous and are under constant review. A residents' associ-

ation works together with the staff and the board of directors to ensure that they are no more onerous than necessary for the safety and efficient operation of the centre.

As regards male visitors, men are permitted at the centre between 7 am and 11 pm daily and until 1 pm on weekends. In an effort to prepare the young women for independent living, the staff place great emphasis on helping the young women build their self-esteem and develop healthy relationships. Most of the residents find the centre's rules and restrictions a help rather than a burden as they strive to gain control over the circumstances of their lives.

Many though not all of the town house residents are graduates, if you like, of the prenatal program and of the six-month apartment program at the Massey Centre. Although residents may stay in phase 3 for up to two years, they do not all choose to remain at the Massey Centre that long. Thus there is no question that this is transitional housing. Fulfilment of the Massey Centre's mission requires that the town house units continue to be regarded as transitional housing.

Unless there is a clear limit to the time any individual can remain in residence, moreover, it will become impossible to create vacancies on a regular basis and so to accommodate other young mothers who may wish to take advantage of this opportunity to prepare for independent living. There is always a waiting list for these units. If some women are allowed to stay over a longer term, other young women and children who need them will be prevented from enjoying the benefits of phase 3 of the program.

Now I come to the most important, crucial issue for us; that is, the issue of security. As explained above, the town house units were created in order to provide a secure environment in which young single mothers and their infants would be safe while they learned to be good parents, complete their schooling and/or job training and develop the personal and social skills needed to become independent heads of families.

The issue of security is paramount. The majority of women at the centre come from violent and abusive backgrounds and often are still subject to negative influences from their past. Their stay at the centre gives them a chance to make a break from the destructive relationships in which many of them are involved. The regulations that prohibit overnight male visitors, allow for the removal of threatening individuals from the units and permit the discharge of residents who engage in drug activities, prostitution or violence are all essential to provide these vulnerable young women with a safe and secure environment while they make changes in their lives.

As far as the children are concerned, it should be remembered that the infants of teenage mothers constitute a high-risk group. Moreover, it is known that the first two years are critical in a child's life. Because some of the mothers are able to stay at the centre until their children reach the toddler stage, the staff can help ensure that their infants are well cared for and that any problems are identified and dealt with promptly. A safe environment is

essential if these high-risk children are to thrive.

There are only two other additional concerns related to safety that I'd like to mention. I don't know how many of you have seen the Massey Centre, but it's actually one physical complex. It's a group of buildings very close together, including the day care centre; it's a separate building but it's right there. It's a physically integrated complex of buildings. Anything that endangers women and children in the town house units also threatens the security of the residents in phases 1 and 2 that I've described; that is, the prenatal and the apartment units. It also threatens the young women and children in the community who access the Massey Centre's programs: the school, the parent-child resource centre; the day care; the young mothers' employment program.

A final point on security: The loss of the current exemption would also endanger the staff, who have a hard enough time as it is, and potentially the immediate neighbourhood.

To sum up, the future of the Massey Centre is put in doubt by the changes proposed in Bill 120. If the centre loses the exemption granted to it when its transitional housing was built, this would first of all undermine the security of all the young women and children at the centre; secondly, it would take away the right of the mothers to opt for a secure and supportive setting that protects them from the negative influences to which they are subject and gives them a chance to break the cycle of violence, abuse and poverty for themselves and their children; third, it would severely limit the number of women able to access the services at the centre; fourth, it would in our view damage the centre's relationships with its neighbours; and finally, it would make it virtually impossible to raise much-needed additional funding from private donations, particularly from the United Church.

For these reasons, the directors of the Massey Centre do not feel that the board can continue to take responsibility for the transitional housing unless it retains certain rights that are threatened by this bill: the right to discharge residents who engage in drugs, prostitution and/or violence, the right to remove threatening individuals from the units and the right to prohibit overnight male visitors.

It would be a shame, in my view, to destroy what has been recognized internationally, not only here in Canada, as a model that should be followed. The Massey Centre is unique, but we're hoping it will spawn more of its kind and many other people are looking to us. We get visited regularly by people from abroad and from the United States. They recognize that we're doing something special because we're not just a maternity home; we do give people a chance over a longer time, and these are very young people who need that time to get on their feet and put themselves and their families in a secure, healthy and independent way of life.

Mr David Johnson: I didn't realize that the Massey Centre was recognized internationally. I've certainly had the opportunity to visit and I've always thought it was an exceptionally well-run organization. In my time as mayor, I suppose there were one or two complaints with regard to the construction activities, sidewalks or whatever, but in terms of the running of the facility itself, it's always

been a first-class organization and a real credit to the municipality. You provide an excellent service, not just to East York but on a very broad basis, obviously.

I guess the question arises about the security that you've emphasized over and over again. The problem, as I understand it, is that there are male companions or whatever—are they all male?

Ms Peters: So far they have been those kinds of power relationships, yes.

Mr David Johnson: And you're talking about drugs and you're talking about violence and you're talking about a secure environment, which obviously is key in the kind of service that you're providing.

1540

If Bill 120 was to go through in the fashion that is before us today, what in your estimation would be the consequence? How would it impact directly on your service?

Ms Peters: I think it's important in discussing the relationship of Bill 120 and Massey Centre to look at the typical resident, the typical young woman who comes to us. She's been physically, emotionally and often sexually abused. A very high proportion of the young women who come to us have had very dysfunctional family backgrounds. In looking at what they're trying to do, to have reached the point where they're coming to Massey Centre to ask for some alternative way of living and to provide a different kind of life for their children, because they certainly do not want their children to be experiencing the kind of violence that they've experienced in their lives, they come to us hoping to leave that part of their life behind.

But what happens is that a number of them have been living on the street, a number of them have dropped out of school, and in doing that, in order to support themselves, they may have become involved with pimps, they may have been prostituting. They have varied backgrounds with those similar kinds of positions in them. So, when they are looking at how they can change their lives, they want to leave those groups.

Currently what happens is that they're followed by the negative influences. They come to Massey Centre. We have them established in housing, we have them established in programs, but the people whom they're trying to avoid do come. We have had instances where the young women have continued to be physically abused. The staff will intervene at this point. We call the police. The first question we're asked is: "Are you under the Landlord and Tenant Act? Because if you are, we will not access." The young woman has to have the police access, whereas currently we can immediately access the apartment with police support and we're able to protect not only the mother but also the child. It's important to realize we have two clients at Massey Centre. We have the mother who is trying to make a change and we also have very high risk infants.

We work collaboratively with a number of community organizations, not only the police, to try and keep a level of interaction so that when the women move back into the community they're supported by public health

services. They're supported in a very different way by Metro children's aid societies, as helping organizations, rather than perpetuating the image that the young women cannot parent their children. They can parent very successfully but they need to have help in achieving self-worth and self-esteem and understanding that they're people who count and power relationships do not benefit them and they don't need to continue to be involved in them. We see under Bill 120 that this perspective that we can have in helping them achieve independence will change.

Mrs Marland: I'd like to thank you very much for your presentation today because I think, as you said at the outset, that the concerns you have are simply an oversight of the ministry in drafting this bill. As you've also identified, there are some good parts to Bill 120 dealing with the aspect of tenancy for vulnerable people.

But I think in this case we probably would hear from quite a few more facilities similar to yours—one in my own riding, as a matter of fact, that's very similar in the program—but they're not aware yet of the impact of this bill. I think that when more of these facilities like yours around the province are aware it will only be a matter of time for the ministry to address the concerns you have.

The point that you make that is so critical is in fact that you do have two clients. We have to be very concerned about the fragile lives of these young mothers but also the even more fragile lives of their babies and their children when they finally get an opportunity to be in a facility like the Massey Centre. It's a wonderful new beginning for both the mother and child.

Have you had any contact with the Ministry of Housing since the bill was drafted and you saw the content of it?

Ms Peters: We've had concerns about the bill since we heard that there were changes that were going to be happening. We heard about that in the summertime.

We were assured by a couple of senior policy people that Massey Centre would still be able to continue its exemption. We then heard from a housing consultant who had worked on the Massey Centre project that we may want to look further into the details of this situation. So we met with Janet Mason in the Ministry of Housing to express our major, major concerns about the impact of the bill on the transitional kind of program that we're providing. That's when it was confirmed for us that most likely Massey Centre would no longer fit under the exemption clauses.

Mrs Marland: Would not?

Ms Peters: Would not, so we are going to be losing our exemption, and that was confirmed by the Ministry of Housing.

Mrs Marland: Oh, my goodness. So what you're telling us is that you've met with the ministry and the ministry is still not listening to your concerns.

Ms Peters: At the policy level.

Mrs Marland: At the policy level. That's very significant. Holy doodle, you'd better get doing the homework, George.

Mr Gary Malkowski (York East): I'd like to thank you for coming and making your presentation. I think it was excellent, and the Massey Centre I think is an excellent model. I encourage all members who haven't been there to go and visit because they'd really get an understanding of the program.

When you're talking about the issue of security I would agree with what you were saying. Women and young children, it's very important for them to have security. I'm just wondering, if I'm understanding correctly, you'd like an amendment to the Landlord and Tenant Act, right? Or you don't want an amendment to it? Which is it? The issue is that you do not want to be under the Landlord and Tenant Act, am I correct? That's the point you want to make clear to the committee. So now I would like to ask you, could you perhaps give us a specific recommendation that could be made and an amendment that would satisfy your concern?

Ms Peters: We've spent a lot of time thinking about this particular question, which we were certain would be asked. It's very important, after much, much discussion, to realize that Massey Centre is asking to continue to be exempted from the Landlord and Tenant Act.

We are providing a unique model for Ontario and North America. We're providing a way that is different in managing issues of poverty and violence for women. We're looking at ways of helping young women move back into local communities and looking at ways for young women to have opportunities to complete their education, to learn about appropriate housing models that are in the community. Certainly, a major part of what we do is help them to learn how to access the community organizations that they feel will be helpful for them.

It's important that the committee understands that what we're doing is helping young women to provide choices in living for themselves and their children. To be under a bill such as the Landlord and Tenant Act is going to change the whole focus of what the model is attempting to do to make a difference for the women and children in Ontario. So in looking at whether or not there's a way to amend the act so that we can somehow fit under it, I feel, after much discussion with the board of directors, that is just not what we're looking for. We're looking for a way to continue this unique model as an option for the future children of Ontario.

Mr Malkowski: I think it's beneficial then to ask the committee to consider the continuation of your exemption so that you can preserve the model that you have. Perhaps if that's something you would recommend, you could send that to the committee.

Ms Peters: That is certainly our position.

1550

Dr Campbell: Yes, that's exactly what we're asking, to keep our exemption and to keep it on the grounds that we are genuinely transitional housing.

There may well be other groups that fall under the same thing—and to have an arbitrary six months' cutoff when the whole thing depends on giving people a choice: they can stay two months or they can stay two years. For the first time we've given the opportunity to these young

women that doesn't exist elsewhere. It would be a shame to cut it off. We simply could not continue to function. We're not in the housing business. We're in the service business. We're trying to create and educate and develop independence.

Mr Owens: I don't have a question but I do want to thank you for coming before committee. You do have an excellent centre. I pass by it almost every second evening on Broadview Avenue on my way back home to Scarborough Centre. I do take the opportunity to promote your service with Scarborough legal services that I deal with through my riding office.

I want to thank you for noting your concerns as well. Our ministry people have heard your concerns and are prepared to try and do some work to assist you to continue the good things you're in the process of doing at the Massey Centre.

Mr Grandmaître: How was this exemption granted? Was it a municipal exemption or Ministry of Housing?

Ms Peters: It was through the Ministry of Housing at the time the project was being developed. It was part of the planning stage. I understand—I wasn't there at the time—it was partly related to the Project 30,000 funding and the criteria that were used with the Ministry of Housing. It was also in looking at—very much program-related—at the transitional model of the project itself and of the program that we were providing for the young women, with the goal of them ultimately moving out, back into the community.

I think it would be interesting for the committee to know that certainly our experience—which again is very short because it's a new project—has been that the young women are moving out into the community, some of them before two years, and they're actually moving into the community around the Massey Centre and continuing to use some of the services we provide.

They're also developing their own support networks and a number of the young women have moved in with each other to form a partnership of living together and caring for their children and sharing those difficult times.

Mr Grandmaître: When was your last meeting with the Ministry of Housing?

Ms Peters: It was just prior to the hearings beginning; it was January 13 of this year.

Mr Grandmaître: Who was the ministry person who advised you that your exemption would be denied?

Ms Peters: We met with Janet Mason.

Mr Grandmaître: And her responsibility?

Ms Peters: She's the director of policy. We were advised that the way the legislation was being written, it certainly appeared that we would lose our exemption and that it may require a legal opinion. At that point it looked like we did not meet the three criteria around young women having a permanent residence and there are a couple of other criteria that we couldn't meet. Our young women live on the street, often, before they come to us.

Mr Grandmaître: What kind of assurance did you receive, if any, from Janet that she would follow up on your exemption and make sure you would be protected?

Dr Campbell: She suggested we come and present a brief to this committee.

Ms Peters: There were no assurances.

Dr Campbell: She said we should present a brief to this committee. She's very much in favour of our project. Nobody up top opposes our project.

Mr Grandmaître: It seems everybody is in favour of your project and—

Dr Campbell: It's just the legislation isn't drafted right to permit us to continue, that's all; a minor detail.

Mr Grandmaître: I suppose in clause-by-clause we'll have to make sure your exemption is ongoing.

Mr David Johnson: There should be an amendment.

Dr Campbell: There must be a way. We're not lawyers so we can't say how you should word it. You've got to work that out, but it's got to be done.

Mr David Johnson: Maybe the parliamentary assistant can help.

Mr Grandmaître: If I may, through the Chair, I'd like to ask the parliamentary assistant: What will you do with the kind of message that you've received today? Will you be talking to the minister about the Massey Centre problems and what assurance would you give these people?

Mr Mammoliti: Is this a point of order? Is he allowed to ask this question?

Mr Grandmaître: You're not the parliamentary assistant.

Mr Gary Wilson: Is that your question, Bernie?

Mr Grandmaître: That's my question, yes.

Mr Gary Wilson: I appreciate the question, and unfortunately I wasn't able to be here for the whole presentation. I understand, and I'm reading over your brief since I got back, that you made a very strong impression on the committee, and I'm not surprised, because it's very well set out.

Through my colleague Mr Owens you heard that the ministry is certainly concerned about making sure that everything is done to meet the issues that you've raised here. We certainly will be looking at it in the clause-by-clause analysis of the bill. Certainly, as I say, I've heard the discussion by the committee and everyone is, I think, impressed by the points that you've raised. So it will certainly be given every consideration.

Mrs Marland: The real need. You're impressed by the real need.

Mr Grandmaître: You can expect a letter next week then from the ministry or the minister saying that your exemption has been granted.

Mr Eddy: It's unanimous.

Mr Grandmaître: Good luck. Keep up the good work.

Ms Peters: Thank you. You've restored our faith.

The Chair: Thank you for appearing before the committee. As you might know, and you probably will be interested, the clause-by-clause examination of this bill commences the week of March 6.

EAST YORK TENANTS' ASSOCIATION

Mrs Mary Jo Donovan: Mary Jo Donovan. I'm the president of East York Tenants' Association. We're an umbrella group for the borough of East York in tenant advocacy. We appreciate the opportunity of speaking to this committee.

We support the bill and we also support the views of others who have been here today, namely United Tenants of Ontario, Inclusive Neighbourhoods Campaign and the Scarborough Second Occupancy Steering Committee on Housing group that just spoke this afternoon. We intend to confine the bulk of our remarks to the section of the bill dealing with apartments in houses, but we'd like to make just a couple of remarks about the care home portion of the bill.

First, we see that the basic issue is that a person should not be obliged to forgo all the rights of a tenant in order to get a back rub. However, some provisions should be made for a speedy relocation of those residents who develop problems which may require some type of intervention not available at the care home. This temporary relocation should have no effect on a valid tenancy. A trip to the hospital should be treated no differently than a trip to Florida. As long as the rent is paid, the tenancy remains intact, even though the stay in the hospital may be longer than expected.

In this regard, some adjustment to the policies regarding shelter allowances for those on social assistance may be necessary. The same amount for shelter should continue to be included in the cheque so that the rent can be paid even if the hospital stay is a lengthy one. It is important that the person have a place to return to.

1600

If charges for care services are under a separate contract and may not be considered as part of the rent, then we have difficulty accepting the idea of a rent control officer becoming involved. Another means should be found for dealing with the regulation of these charges. I realize that this is not in the bill, but it is mentioned as a possibility.

The balance of our remarks will deal with apartments in houses and will really be of a general nature. There have been a lot of very well informed, detailed submissions made here by tenant advocates, and I'm not going to duplicate that. I do, as I say, support what's been said.

I really think that parking is a separate issue, but we've had it forced on us. We're supposed to deal with it in this bill, and I think the final draft of the bill with regard to the fire safety issue in basement apartments and the difficulties that may arise from a tandem parking situation.

The majority of basement units have their entrances towards the rear of the house. The kitchen is also usually located at the rear. This means that you have to pass the kitchen to get to the exit, and I understand that kitchens are where most of the fires start. The logical thing would be to have the emergency exit towards the front of the house, which is a window, and generally the windows in a basement apartment lead out into the driveway, which

is quite often a mutual driveway. If you have tandem parking, it is a good possibility that one of the cars would have the wheel of the car right beside the emergency exit window, which would effectively reduce it to not an emergency exit any more.

I think you have to look at that and find some solution for that, so that if there's going to be tandem parking it won't interfere with an emergency exit. Also, tandem parking could on occasion interfere with firefighting equipment gaining access to the part that they need to get access to. So I really have a lot of problems with that business of tandem parking. Maybe somebody already has a brilliant solution to it that I just haven't heard of.

The other thing that I think has to be done for fire safety is that this emergency exit should be clearly indicated from the exterior of the house, outside, so that people know where the exit is, especially firefighters. If somebody's trying to get out, that's likely where they'll be and they could at least go to that window first to help them.

I think that there should be a really intensive publicity campaign from all concerned, from the fire departments and others, and the government, to inform tenants that they have a right to a fire safety inspection and I think that, if they know they can do this, they will do it. Tenants don't want to burn to death, they want to be safe, and not everybody realizes that something's a hazard unless an expert comes in and says, "You really shouldn't have that there," because of this or that or the other reason. It should be very clearly pointed out that of course the access from the inside to this emergency exit would have to be clear of any obstructions.

I used to own a house in north Toronto some time ago. It had a basement apartment. I chose to live in the basement apartment and rent the main floor. It was a bungalow. When I bought the house I changed the windows so that all of the windows in that apartment could be lifted out for easy exit into the driveway. I upgraded the fuse-box, put some breakers in it, and it wasn't expensive to do. It was \$300 or \$400. It wasn't a big deal in other words. I think that a lot of these places can be upgraded with very little cost. There are others that probably shouldn't even be in existence, likely cost what they should have cost in the first place when they were first put there.

My children were very little and we used to have fire drills and I would wake the children up at 3 in the morning, put a heavy wool hat over their faces and they had to get up and get out their bedroom window. We got it down to the point where they could do it in one minute after being woken out of a sound sleep. People have to be responsible for their own safety too.

Once these units are legal, even if there is a minor flurry of new units, these new units will quickly replace the old ones because tenants are going to move from the substandard old ones into the new ones. The substandard old ones will either have to be brought up to standard or else they won't be on the market any more, unless they're improved. Tenants aren't going to stay. If there's a new one there and it's good, they're going to move to it. Tenants move around all the time. There's probably a

30% turnover in most buildings.

It's obvious from the questionable remarks of some that the concern is not really the number of people but the fact that some of them are tenants. The mayor of Mississauga and others have long been aware of the existence of thousands of accessory apartments in their respective municipalities and have done nothing to ensure that these units were safe and up to standard. With the passage of this bill, Mississauga and elsewhere will have to get their act together and do what they should have done long ago.

It would be difficult to find a street in East York where there isn't at least one basement apartment, and people have advertised basement apartments in East York and put signs on their front lawns. So everybody knows they're there. I think that the attitude in East York is far more enlightened than elsewhere.

Because they are typical of a lot of intemperate viewpoints, we feel compelled to make some comment on the frozen attitudes of our neighbour to the north. I'm not only presuming to do this because this is a provincial issue but because I'm a member of the board of Flemingdon Legal Services and I have a peripheral contact with the North York situation.

So far they've denounced social housing, deleted rooming and boarding houses from consideration in a 16-year attempt to come up with a housing policy and deferred the issue of accessory units pending the outcome of this bill. There was an ill-conceived plan to arouse public opposition with a scare campaign by inserts in the water bills. As far as we've been able to find out, this was a dismal failure. The information we have is at least 70% of the people in North York are in favour of this.

A number of municipalities have launched an all-out attack since the introduction of the bill, but one of the most extreme in their public statements has been North York, with their horror stories about tenants, wild parties, little old ladies in fear of their lives. The evidence indicates the majority of so-called neighbours from hell are not tenants but other home owners. At least when you're dealing with a tenant, the Landlord and Tenant Act provides a ready solution. The eviction process takes a couple of months and the tenant's gone. With a troublesome home owner, you are obliged to put up with an ongoing aggravation or else move.

At a public meeting of the North York planning advisory committee—this was some time in September 1993. They're still trying to come up with a housing policy after 10 years. They just won't face the reality of changing population trends. But the attitudes and the remarks were so blatantly offensive, the people who had been invited there to make deputations were dumfounded.

One of the councillors had the audacity to say that bad tenants should be dragged out and shot. I mean, let's get real here. To compound this outrage, not one of the other members challenged him. No doubt he's going to claim, if you ask him, that this was intended as humour, but I hardly think that we can call this humour. It's simply not funny. It's reprehensible that elected officials could publicly insult close to 50% of the population with apparent impunity.

If you're a decent, hardworking person with a low income looking for a good, affordable place to live, the policies of North York council are designed to let you know that you're not welcome. Loopholes in this bill had better be eliminated before third reading or North York and others of their ilk will find a way to exclude people for all the wrong reasons.

Across the province, we have a wave of alarm and consternation, as though the tenant population was suddenly going to run amok because basement apartments are legal. Some of the comments and objections are really very difficult to take seriously. They give rise to a mental image of banner headlines in Moncton and Regina, announcing the coming availability of legal basement apartments in Ontario and the sudden influx of people from east and west clamouring for these units, full of joyous anticipation at the thought of having their very own basement apartment—just what they've always wanted. In the absence of this scenario, we fail to see where all the people are coming from to fill the thousands of new units which those opposing the bill have anticipated in their dire predictions.

1610

As to the pristine communities like Forest Hill et al, we would like to offer a word of reassurance for those in the clutch of panic and the grip of fear at the prospect of an imminent invasion cluttering up the neighbourhood: You can relax, because it's not going to happen.

However, it bears pointing out that basement apartments already exist in these areas—they are just referred to by different names; like maid's quarters, for instance—and are often used by young adult family members as separate living quarters, and should be scrutinized with the same concern for fire safety.

In closing, I would like to say that with all the bizarre and extreme attitudes which have been expressed in discussions of this bill, I am thankful that most of my dealings as a tenant advocate are with Mayor Michael Prue and the East York council and staff who are, by comparison, eminently progressive and enlightened. After hearing from people in North York and Scarborough, I'm beginning to think that East York is an island of sanity in a sea of silliness. It boggles the mind some of the stuff that you're hearing.

I'd like to thank the committee for its kind attention. I'll do my best to respond to any questions you may have, but I'm not fully conversant with all of the aspects of the care portion of the bill, so I would confine my comments to those things which I've already mentioned.

Mr Malkowski: Thank you very much, Mary Jo Donovan. That was a great presentation. As president of the East York Tenants' Association, you do a wonderful job and you're a wonderful resource to many of the tenants. I know they look up to you and your hard work.

I would like to ask you something. What has been your organization's experience with basement apartments? Does your organization often get calls, or will tenants ask, or do they mention at all the absence of inspections and that kind of thing? What kinds of things are you hearing?

Mrs Donovan: Basement apartment tenants probably don't know we exist, because we have no way of accessing them, and they're not generally eager to come forward, because of their illegal status. I am sure that once the bill is passed and they have a legal status, we will hear a lot more from them and we will do more to try to access them.

There's not really much we can do for tenants in the illegal units at this point, but when they are legal, then we'll be able to tell them: "Call the complaints department. Get the inspector around there. Get the place fixed." There isn't any reason why it will be a problem after the apartments are legal.

Mr Mammoliti: Mrs Donovan, thank you very much for coming today. Who was the councillor who said that some of these tenants should be shot?

Mrs Donovan: That was Milton Berger, I believe. Let me check the name here; I've got it with me. Yes, I'm sure it was Milton Berger.

Mr Mammoliti: Hopefully he'll be here today with the mayor.

Mrs Donovan: The reprehensible, really bad part about that was that the people had been invited there to a public meeting to make deputations on housing policy. There were about 20 deputants there. There were about 70 people in the room, and after all their deputations, they were just totally insulted by this awful attitude. It wasn't just what was said; the whole attitude of the council members—

Mr Mammoliti: I note that you're going to be in front of this committee on Bill 95 in a couple of weeks. That bill deals with vital services in high-rise buildings. The relevance of this bill to 95 is absentee landlords, in my opinion, and I hope we can get into that in a couple of weeks.

Over the last couple of weeks I've heard the opposition talk about absentee landlords when it comes to accessory apartments, but I haven't heard a word from anybody about absentee landlords in high-rise buildings. For instance, one landlord who owns a high-rise building in my riding happens to live in China. That poses a great problem, but I haven't heard anything from anybody at any time about these absentee landlords.

What's your opinion on absentee landlords and the whole argument around why landlords should be there in homes in this type of situation, Bill 120? Do you believe that they should be there, and if not, why not?

Mrs Donovan: I don't believe they should be there or they shouldn't be there. I believe that they should do what they're supposed to do, whether they're there or not, which is maintain a decent piece of property and not let it go to rack and ruin. What's the difference if they're there or not? The important thing is that they live up to their obligations as a landlord.

I personally, if I was renting a basement apartment, would prefer to have an owner-occupied other unit, but that's just my personal preference. Some people may not care, or some people may prefer not to have the landlord living right there, especially if the landlord's inclined to be fussy and demanding or something. All landlords,

including the ones who are offshore, should maintain their buildings, maintain their apartments, keep them in decent condition, safe and secure.

Mr Gary Wilson: Thanks very much for your presentation, Mrs Donovan. You certainly provided us with a lot of information, I think, as somebody who's actually been in the locations. For instance, your experience with windows is very relevant to our deliberations here, because that has come up, with some suggestion that it wouldn't be that useful a method of getting out of an apartment. But you've found through your own experience that it is manageable.

Mrs Donovan: Oh, yes.

Mr Gary Wilson: I'd like to ask you, though, just briefly what you'd say about the suitable size for an apartment. For instance, 700 square feet: Does that strike you as a minimum size for an apartment, a second unit?

Mrs Donovan: There are square footage requirements in all apartments. Municipal bylaws have square footage provisions for apartments already. You don't want six people living in a 10 by 10 room, let's face it, but I don't think the regulations for basement apartments should be any more onerous than they are for any other apartment, and they should take into consideration the fact that it is a basement apartment and there may be portions of the ceiling which are lower than others. I wouldn't recommend a basement apartment for somebody who's six foot six, personally; they should choose something else.

Mr Gary Wilson: Unless they want to live there.

Mrs Donovan: Unless they like hunching over. Most basement apartments simply have lower ceilings. When you go to get a basement apartment, you're already aware of that. You realize that it has lower ceilings. As long as it isn't some kind of a safety hazard or something, as long as the ceiling material is sufficiently fireproof or whatever—it's supposed to be to prevent the rapid spread of rising flames—I don't think people should be running around being really concerned that you have to have exactly this or exactly that. Just be reasonable. I just want everybody to be reasonable.

Mr Eddy: Thank you for your presentation and especially for speaking to the safety issues. That's my main concern, because safety issues are indeed in many cases a matter of life and death and I appreciate your speaking to them.

I'm rather convinced that the emergency exit should be to ground level. I don't think a window is sufficient, and certainly an interior stairway is very vulnerable, especially in view of what you said: It usually goes up near the kitchen or the exit is through the kitchen. Windows vary in size and accessibility, and I really think that there has to be an emergency exit to ground level. I realize that's much easier to build in a new facility, or indeed in some facilities, but really that almost has to be, so I'd like you to respond to that if you wouldn't mind.

1620

You did mention about the many loopholes in the bill that need to be addressed, and I wasn't clear on those. Would you mind speaking to those?

Mrs Donovan: No, I said if there are any loopholes,

they'd better be addressed.

Mr Eddy: Did you have any particular ones that you would speak to or recommend?

Mrs Donovan: Nothing specific, no, although I have a little problem here and there with things. But it's not something that I've really put down on paper.

Mr Eddy: So most of the things, in your opinion, have been addressed?

Mrs Donovan: Most of it seems fine.

Mr Eddy: What do you think about having the emergency exit as a stairway of some type to the outside? That's what I am so concerned about, the possibility of fire and an emergency exit, one that can be used in the case of emergency. I noted what you said about the tandem parking etc, real concerns.

Mrs Donovan: I'd like to know what you mean by the emergency exit being at ground level.

Mr Eddy: Going to the outside.

Mrs Donovan: You don't want a window well.

Mr Eddy: I think that's most awkward. I think it has to be a stairway to the outside.

Mrs Donovan: Let's face it, In houses a lot of the times the way people escape from burning houses is through windows. It's not through doorways.

Mr Eddy: Yes, I agree.

Mrs Donovan: So why make a difference for a basement apartment?

Mr Eddy: There's a tremendous difference in size.

Mrs Donovan: A proper-sized window in a basement apartment is just as easy to get out of as it is if you were getting out of a window in a house. Most basement apartment windows are sufficiently large for people to get through, to get out.

Mr Eddy: They're not usually as accessible in that they're usually higher than a window in a—

Mrs Donovan: You have to have a little stairway or something there to get out. Yes, that's fine.

Mr Eddy: I see.

Mrs Donovan: In my situation, the children's bed was right under the window. All I had to do was stand up on the bed to get out. So we didn't find it a problem. There's such a variety of window styles and everything available on the market now, you wouldn't have any problem. Even if the home owner didn't want to put in all new windows, they could at least find something that was suitable for an emergency window. I haven't any doubt about it.

Mr David Johnson: I wish to thank you, Mary Jo, for your presentation as well. I want to say that in my dealings with you, you were always reasonable. You're a reasonable person, so I hope we can be reasonable in dealing with yours.

Perhaps just to carry on with the aspect of the concern from the fire chiefs, we've had a number of fire chiefs before us in this committee and they are expressing these concerns with regard to exits from the basement apartments.

The draft regulations that have come forward specify

a certain size for the window if it's going to be used as an exit from a basement apartment. But one of the dimensions need not be any greater than 18 inches. I know that caused some concern for the Scarborough fire chief, who was here this morning. I wondered what your view would be on that. Eighteen inches seems a little on the small side to me.

Mrs Donovan: I'd have to say, if I can get out of it, then it's probably big enough.

Mr David Johnson: Can you get out of an 18-inch window?

Mrs Donovan: I don't know.

Mr David Johnson: Mind you, the other dimension could be two or three feet, but we're talking something that's a foot and a half by something else.

Mrs Donovan: I don't see a problem with that, although I would want to see the physical thing. But I'm sure that before that was put in the proposed regulations, somebody examined it, that an engineer or somebody did give it some thought. I'm not about to second-guess them right here and now.

I don't think our windows were any higher than that. They were about 30 inches wide by about 18 inches.

Mr David Johnson: How high would they be? They would be up towards the ceiling. They'd have to be right at the ceiling.

Mrs Donovan: No, they were a little bit below the ceiling. They weren't right at the ceiling. If you go down in your own basement, you'll see that your windows that let light into your basement are not flush with the ceiling. There is a space between the window and the ceiling usually.

Mr David Johnson: Some of the deputations that we've heard have strongly recommended that there be a registry of these apartments; if Bill 120 goes ahead and legalizes a basement apartment in every residence, that the municipality have a registry of the apartments so that it knows where they are and can inspect them and ensure proper standards and that sort of thing. The bill as it stands to date does not provide that this would happen. I wonder what your view on that would be.

Mrs Donovan: I think they should be included in the rent registry so that people have some protection from unfair rents, for that matter. I don't see why the municipality needs to have a registry for them. Of course, the obvious reason is because they want to be able to reassess the property and collect more taxes.

But I think that what you're going to find is that eventually these things will all work themselves out, and sooner or later you'll have a situation where everybody knows where the apartments are, they've been inspected and the tenants have smartened up and insisted on having a decent place to live and have stopped being afraid to come forward.

You've got to have an educational campaign going on here to get these things. They can't happen overnight. But I think in a couple of years, after the bill has gone through, you'll see a big difference and you'll see people coming forward and things getting done.

Mr David Johnson: I see right behind you the mayor of North York sitting there, and he would say that, if this does go ahead, he probably would like to reassess the units and get the money. But the municipalities do not have the right to reassess. The responsibility for assessment rests with the provincial government.

Mrs Donovan: All these changes in tax and the Fair Tax Commission and all this stuff, I assume something will come out of it.

Mr David Johnson: You're an optimist, I suspect.

Mrs Donovan: Sure. Somebody has to be.

Mr David Johnson: Maybe. You raised an interesting issue. We hadn't heard that before, windows facing into driveways. The real concern, and I can understand where you're coming from, is people having to come out through these windows into a driveway facing a car, a car that may indeed block the window. But I wasn't sure where you were taking it. Were you suggesting that these windows should be excluded from being considered as an exit or that cars should not be parked there?

Mrs Donovan: Oh, no. I think the window should be clearly identified from the outside so that people know enough not to park there. Also, if there's any way to avoid it, parking should not be permitted there. On the other hand, if you have a mutual drive and the two home owners agree that it's all right, that you can use the driveway to park in, there should be enough space between the car and that window to admit of an exit route.

The other thing is that the front end of the car should probably not go past the front end of the building. That would be my preference, that the front corner of the building and the front bumper of the car should have a couple of feet space between them so you can get past them. However, I'm sure that some really brilliant person will come up with a great solution to this problem, and I'll support them.

Mrs Marland: We're all concerned about the safety of tenants in basement apartments. I just wondered if you are also concerned about the cost of upgrading these apartments and the fact that this may in fact result in tenants losing accommodation that they presently have, even though it is unsafe.

Is that a concern of yours, that people will simply not be able to afford the upgrades necessary to make that basement apartment safe?

Mrs Donovan: If an existing illegal apartment is so unsafe that it requires \$5,000 to fix it up, then people should not be living in it and endangering their lives. But I'm saying that there will be other units available once this is legal, and better units. These ones will either have to conform or get out of the business.

The Chair: Thank you, Mrs Donovan, for coming to see us today. We appreciate your presentation.

Mrs Donovan: I got carried away with the blue pencil, so I don't have a copy for you, but I will fax one tomorrow.

The Chair: Thank you very much.

CITY OF NORTH YORK

The Chair: The final presentation of this afternoon is from the city of North York, Mayor Mel Lastman.

Mr Mel Lastman: Mr Chairman, this is Bobby Walman, my executive assistant at Metro council. I want to thank you for having me here today. Let me tell you, everything I'm going to ask you is completely reasonable, so I hope you're going to be exactly the same way.

North York council is not opposed to the legalization of basement apartments in single-family houses. This helps a lot of people on fixed incomes, this helps senior citizens, it helps a lot of people who ordinarily wouldn't be able to afford to buy a home to buy a home. However, there are some conditions that the city of North York is seeking: mainly, a way to get rid of problem tenants and a way to try to keep parked cars off our streets.

For example, an elderly gentleman called my office, very upset, completely frustrated over the length of time it was taking to evict an undesirable tenant who's renting a basement apartment in the man's home. The tenant has made his life miserable on a daily basis, with constant noise and people coming and going at all hours of the day and night. He didn't know it at the time; we found out after that it was a prostitute. That's the reason for the people coming and going in the evening.

Now, here's another example, attachment A. This happened in the city of Toronto a while ago and the same thing could exist very easily today. A tenant who rented a room in a house exposed himself to an eight-year-old girl who lived in the same house. Her mother and father own the home. They were both immigrants to Canada. Both worked hard and rented out rooms because they wanted to be able to buy this home and own a home. They had to go to court because this guy exposed himself and they didn't want this guy in their home any more. The guy wouldn't move. They had to take him to court.

Can you just imagine the trauma and fear of waiting many, many months until this thing came to court so they could get rid of this person? Now, remember, both work and the young girl gets home at 4 o'clock. Who knows when this guy gets home and what could happen. Meanwhile, the guy was still living under the same roof as their daughter and themselves.

How sickening the idea is that you have to force people to live with people they can't live with. That's what some of this is getting at. As long as a tenant pays his or her rent, the landlord or home owner or ma and pa, whatever it is, will be practically powerless. I am not talking about people who own high-rise buildings; I am strictly talking about people who own little, tiny homes 1,200, 1,500, 1,800 square feet. They're sharing their air space with someone else because they may want the revenue, may need the revenue and at the same time they're offering someone else a chance to get something at a lower rent.

Your proposed legislation plans to legalize basement apartments across Ontario in single-family homes and town houses and row houses. In the past, cities were able to forbid basement apartments and could limit the number of people living together in a single-family home. If there

were bad tenants, the city could get them out. Under the new law, our city would no longer have any control. When we had the control, we in the city of North York only used it when there was a very serious problem, when these people were going to come to blows or when we saw they could no longer get along together, rather than let the thing fester and look for more crime.

Now you are throwing out our bylaws in favour of this new legislation that makes it impossible for North York to protect neighbourhoods from rowdy or unsavoury tenants who rent a room or basement in a private home.

Now, I'm not saying the landlord isn't wrong, but the landlord is the person who went out and put out the \$200,000 or the quarter of a million dollars or the \$150,000 or the \$100,000 to buy the house in the first place. Someone has got to move, and it can't be the landlord, it's got to be the tenant, because the tenant is not going to take over the house.

This is not a high-rise building I'm talking about. Please understand it. I'm not even touching high-rise buildings, because what you've got in high-rise buildings is good and it's proper.

I left my glasses down at Metro. I'm sorry, I can't even see what I've got in front of me. Not only that, I've had the flu for the last three months.

Mrs Marland: Try these; they're straight magnifiers.

Mr Lastman: The colour matches my tie. Isn't it great? They're great. I can see. Thank you. There is pink somewhere—yes, there is pink in the tie.

I'm concerned that the landlord won't even have to live in the house and there will be no limit to the number of people who live together in the same house—and out of frustration, please understand, I was getting complaints, a lot of complaints. People were getting fed up.

We had some rooming houses move into North York where men were urinating on the veranda in the backyard. The kids were seeing this. They were drinking, beer bottles. This is not in all cases, and not all tenants are bad. I'm not saying that. Please understand it. I had a few instances where I had to do something.

At times I've been accused of being innovative, and I did come up with something called Dirty Harry. I did do this. I did get an inspector, dressed just as a tenant, renting a room, because we couldn't prove anything. Every time we went to this home, they'd say, "No, we don't do this." He did go and he did rent a room, and every time he'd rent a room, we'd nail them and we'd get rid of them, because, look, it was horrible the way these people were living: cockroaches all over the place, two, three people to a room. It was horrible. Nobody would live like that. Nobody would want anybody to live like that in our province, and I didn't want it in my city.

Once you rent to a tenant who turns out to be a bad apple, it's going to be practically impossible for you to get rid of that person as long as he or she pays that rent. There is nothing the city of North York can do or will be able to do to assist. It's insanity. In Ontario, it'll be easier to get a divorce than it will be to get rid of a bad tenant, and I understand that can be pretty rough at times.

Now, we need changes to the Landlord and Tenant

Act. I'm not talking, I repeat, of high-rise buildings where the units are totally separate and the neighbouring residents don't have to have anything to do with each other or the landlord can say he wants to rent to his cousin or something like that. I'm not talking about any of that stuff. I'm only referring to the single-family homes where you share your air space and you can't get along with that person.

With Bill 120, elderly people can be victimized in their own homes by inconsiderate and disrespectful tenants. Not all tenants are like this, please understand, but it happens and it's happened many times in my city. We will have people sharing their homes with a tenant who they can't get along with. They can be at each other's throats, but they will be forced to live together and they're not even related. It's bad enough if you're related; you can't get rid of the person. But why force somebody to live with somebody they're not even related to?

1640

We have neighbours forced to live next door to noisy or rowdy people. In the case of absentee landlords, the rental properties are often a mess and a complete eyesore to the neighbours. This is not in all cases; 90% of the tenants are great and they take an interest in the community and they look after the community, but what do you do about that 10% or 5%, whatever it is? It's not many, but you've got to give us some leeway; you've got to help these people who could be in real trouble.

I believe that home owners should be entitled to relief from distressing situations like the ones I've mentioned. I get people calling my office, crying on the telephone out of desperation because tenants are making their lives a nightmare. Municipalities are being left totally unprotected by this proposed legislation. We need a tough new Landlord and Tenant Act that protects landlord and home owner. Please understand that you can't force people to live together if they don't get along.

What about cars now on the street? This is an extremely important concern. It's not as important really as finding a place for a person to live, and I agree with that. Parked cars on the street cause problems in North York.

We have—and I'm not bragging, honest; it's not like me to brag—the greatest snow removal program in the world, including Florida. I kid you not when I say it.

Mr David Johnson: You even got a smile out of George on that one.

Mr Lastman: Snow clearing is vital, particularly with this winter we're going through right now.

Let me tell you the way it was. The snow would come down, the guy or the woman would come out, shovel out their driveway, along would come our snowplow and three, four feet of snow, and the guy would have to come back out and shovel out the driveway again and then it would snow again that same night. Within six hours, in most areas, we have all the snow removed; three, four feet, a windrow again.

Now, I'm not saying hold up this bill because of it, but you've got to give us something because, if cars are parked on the street, we can't give our customers, our taxpayers, the proper service because we have invented

a system where we do not plug driveways. It works and it works well. We invented this system and it's excellent.

Please understand, people 50, 60 years old should not be shovelling three- and four-foot windrows from in front of their driveways without the danger of a heart attack or a stroke, and we can no longer do their driveways. The calls used to ring off the—it used to drive me nuts and I swore, "We're gonna come up with a way, we're gonna invent something, we're gonna come up with something to end this," because you can't just keep answering the phone all winter long about windrows in front of driveways. It was driving me out of my mind already. I was determined. We got after our staff and we came up with this system and this system works. We don't plug driveways in North York. There are a lot of people in North York who are 50, 60, 70 years old who cannot shovel windrows. I don't want things to go back to the way they were.

What we're asking you to do is consider as well that cars on streets hamper the streets. Help us, get us school yards. Before you pass this legislation, get us school yards where the people can park their cars so they don't have to park them on the streets, or hydro rights-of-way or whatever, so we can keep clearing that snow.

We do every road in North York. We never plug a driveway and we do every sidewalk in North York and it's all done within 12 hours. Please understand that. You will never get a complaint from somebody about a windrow being plugged in North York unless it's a huge snowstorm and we have to do the roads first, then we come back and do the windrows. We make sure everyone can get to work, everyone can get to school and every senior citizen can go out and get their milk or whatever.

Consider as well that cars on the street hamper Neighbourhood Watch programs, as it becomes difficult to identify which cars belong on the streets. Okay, a lot of municipalities just put up signs. North York doesn't. We're the only municipality that hires people to work on these Neighbourhood Watch programs. We have award nights when we make special presentations where people call in and phone in to the police strange-looking cars. Strange people who are up to no good are caught and arrested and awards are given to these people. The program is working well in many areas of North York.

The province must work with us to make hydro rights-of-way, school yards and other lands available for parking before you make this move. This is not a light move. You can't just make changes without saying why is this working.

We also want the province to give our municipal investigators full powers of entry to get into properties to inspect and to see the conditions under which some people could be living. Some people could be living under very, very terrible conditions. I've seen it myself when I went out with this Dirty Harry guy.

Metro council is on record as wanting our concerns on parking and eviction resolved prior to enacting this bill.

Another point is taxes. North York council has called for the automatic reassessment of dwellings with apartments in homes to reflect a higher market value. Single-

family homes with accessory apartments will bring more people into our neighbourhoods, which could place a strain on municipal services such as garbage, sewers, water and schools.

Then there's the issue of fire protection. If you intend to go ahead with Bill 120, I would strongly suggest sprinkler systems should be mandatory for basement apartments in homes.

I've attached a motion that I declared months ago and it's in front of our committees right now. My concern is what it's costing us for fire protection in North York. Just to staff one pumper costs us \$1 million a year, because you have to have four shifts and it takes four people per pumper, so you're looking at 16 people times over \$60,000.

"Whereas Canada leads the world in deaths due to fire;

"Whereas North York fire department is striving to reduce the threat to life and property damage with a very"—gee, these glasses with this tie and this hankie, I'm not going to look too good when my wife sees this—"aggressive fire prevention program;

"Whereas the technology is now available to provide sprinkler systems in single-family residential homes that are so effective that the fire could be put out before the fire vehicles arrive;

"Whereas sprinkler systems installed in homes could eventually reduce the number of additional fire stations, trucks, equipment and firefighters required, saving taxpayers millions of dollars in years to come;

"Whereas home insurance fire premiums could be reduced by as much as 40% with a sprinkler system;

"Therefore be it resolved that the city of North York request the province to amend the Ontario Building Code to require that all new single-family homes be equipped with sprinkler systems; and

"Further be it resolved that the fire chief, the commissioner of buildings, commissioner of public works and the treasurer be directed to report back on establishing a sprinkler system program for new single-family homes. Their report should include the costs of installation" and so on.

1650

By the way, on the installation, I even have those prices. The technology is available to provide sprinklers in single-family homes that are so effective that the first could be out, as I said, before the firefighters arrive. Having sprinklers in your home would be like having a firefighter sitting in your home 24 hours a day.

It costs roughly \$1.50 a square foot to install a sprinkler system in a new home. For example, it would cost \$3,000 to install the system in a 2,000-square-foot home. It costs around \$3 a square foot to install a sprinkler system in an existing house. It is worthwhile just to cover the basement area, the upper floor or whatever.

Mr Mammoliti: Leave time for questions, Mel.

Mr Lastman: Fine. I'll stop right now. My throat is killing me, so I'll just take a drink of water.

Mr Grandmaitre: Mr Mayor, thank you for your presentation. You'll have to excuse us for dragging you

out, especially when you're suffering from the flu.

Tell me in your very descriptive words how you feel about the government imposing on municipalities or—well, let's use the word "imposing" its will on the planning and zoning bylaws. Do you feel that the provincial government is downloading again?

Mr Lastman: I don't want to get involved in that. Honest. All I want is one word in there—I'm sorry; I should have mentioned this. I've come up with the proposed wording. It's on the last sheet:

"'Home-sharing' unit could be defined as a unit in an owner-occupied dwelling created after January 1, 1991," whatever the wording is there. All that means is that the owner, that the mom and pop, guy and gal, who own the house don't have to go to court. That's all. We tried. We did meet with the minister at the time, who was Mr Cooke, and we just couldn't get him to listen at the time. We just hope that you're going to listen now.

Mr Grandmaitre: In attachment B, your resolution, how would your planners or city engineer describe a basement apartment? What is a basement apartment?

Mr Lastman: I have seen many. I have seen one basement with a furnace. The place looked terrible. They made it into about four different apartments and, other than the bed and the table, people didn't have room to even hang up their clothes. I don't know what it is. It could be anything.

I have seen some terrible ones with this Dirty Harry experience, full of cockroaches and everything else. But some basement apartments I'm sure are very nice. I know we have about 15,000 of them in North York. We don't care, as long as no one complains and there are no problems and people are living under proper conditions.

Mr David Johnson: Mel, I'm just trying to go through your presentation. It seems as if North York has come to the conclusion that it will support accessory apartments, basement apartments, on the basis that the municipal inspectors have full power of entry, on the basis that there be a provision for the eviction of bad tenants, on the basis that the parking be off-street.

Mr Lastman: We'd like it that way. We would really like it that way only because of the snow clearing. When you have a winter like this it's scary that people have to shovel three and four feet of snow out of their driveways maybe twice a week or something.

Mr David Johnson: Another basis is that you want the units to be reassessed?

Mr Lastman: Yes.

Mr David Johnson: To reflect the value?

Mr Lastman: Yes.

Mr David Johnson: I wasn't sure about the owner-occupied. Are you recommending owner-occupied?

Mr Lastman: Yes.

Mr David Johnson: So that the units would be owner-occupied. The government is saying that the bill, Bill 120, as it's before us, will allow you in North York a better right of entry, not a full right of entry but a right of entry to the extent that it will solve your problems. I don't buy it myself.

Mr Lastman: There is no right of entry. Unless we get in complete legislation they won't let us in. The only guy who can get in is the health inspector—in fact I don't even think he can get in without the fire chief. You know, we were going out of our minds. Look, I didn't want this Dirty Harry thing. I didn't want to do that but I had no choice.

Mr David Johnson: That's the only way to solve the problems that you're facing, I know.

Mr Lastman: That I had at that time.

Mr David Johnson: I've been there.

Mrs Marland: Mayor Lastman, you don't share the concerns of the majority of the municipalities that are members of AMO about the aspect of controlling the zoning in their own municipalities from a planning point of view. For example, the Minister of Housing, Ms Gigantes, has said that if zoning were to control where basement apartments could be located, that is snob zoning.

So you don't share the concern of the other municipalities that want to be able to say where from a services point of view, infrastructure point of view, school accommodation and everything else, a practical point of view, whether or not there are sidewalks on that street—you want to have the control about where this duplication of intensification of accommodation would exist in North York.

Mr Lastman: I felt we had to come up with something reasonable and I feel this is reasonable. I feel my council was reasonable. I feel Metro was reasonable in this. I feel there are people who want cheaper rent and I don't blame them. Maybe a lot of them need it, must have it. A lot of people must have the revenue and, if they can get along, I think it's just great. I have no problem with people renting basement apartments or whatever. I have no problem with that at all. But please don't stick me with people who hate each other and are ready to kill each other.

Mrs Marland: As long as they have control of their tenants.

Mr Mammoliti: Hi, Mel. Mel, you're a likable guy; I like you, Mel, and you're very easy to like, actually. As a matter of fact, most people in North York like you. But I've got to disagree with you on one point. You talk about Dirty Harry and you talk about the plan that you had to go into some of these units and the examples you give are cockroaches and lack of space. Go into your high-rises, Mel. Go into the city of North York high-rises. I know you didn't come here to talk about high-rises, but when you spoke about cockroaches and lack of space, that's exactly what's happening in your high-rises.

When you say Dirty Harry, maybe Dirty Harry should have gone into some of these high-rises and dealt with even the vital services that some of these landlords who live in China aren't giving those tenants. Maybe Dirty Harry should have done a little bit of investigating in some of those high-rise buildings and stopped some of these landlords from doing what they're doing and are still doing, quite frankly.

Mr Lastman: George, I have been in some these high-rises and I've seen the cockroaches and let me tell you they weren't nearly as big and there weren't nearly as many. Some of them maybe could have had driver's licences, you know. I have never, ever seen such dirty, filthy circumstances in Canada, or let me put it this way, in North York, as I saw in these basement apartments where they were renting to different people and a different guy in each hole.

Mr Mammoliti: Are you saying a different style of cockroach?

Mr Lastman: I think there was one guy sleeping standing up in a closet. I wasn't sure. I didn't want to open the door. I was afraid.

Mr Mammoliti: Mel, the suggestions you make, in my opinion, are quite reasonable and I think they're worthwhile looking at. But in terms of the exaggeration, in terms of bigger cockroaches in basement apartments than in high-rise buildings, I'm certainly not going to listen to that.

I think we need to look at the stuff that you're talking about. Easier access, you might have a concern with that and I think it's reasonable to look at things like that. "How can we best accommodate you?" But what about the language, Mel? You're talking about the municipality being an arbitrator here. You're talking about the mom and pop who decide to rent out their unit arbitrarily just saying: "I don't want these people any more. Kick them out." Who's going to determine that? Right now there's a process, Mel. Right now there's a process in the province. Who's going to have that authority? Is it the city of North York?

Mr Lastman: George, no. I don't think that authority is necessary. If the landlord can't put up with the tenant, as I said earlier, it's the landlord who makes the decision. Unfortunately, he's the person who's put the money, he's the person who has the home and you can't ask people to share air space who can't get along.

As I said, it's easier to get a divorce than it is to get rid of the bad tenant. I've given you an example of an eight-year-old girl who had a guy expose himself to her and they couldn't get rid of him. They had to go to the courts for months and the parents worked. What do you do in a case like that?

Mr Mammoliti: What do you in a case—

Mr Lastman: I'm not asking the question, I'm—

Mr Mammoliti: What do you in the case where a—

The Chair: Mr Mammoliti, the time has expired. Thank you very much, Mayor Lastman. We appreciate your presentation before the committee. For your information, clause-by-clause consideration of the bill will begin on the week of March 6. Thank you for coming.

Mr Lastman: And thank you very much for the glasses.

The Chair: For members' information, this concludes our sitting in Toronto for this week. Tomorrow at 9 am we will take up hearings in Windsor.

The committee adjourned at 1702.

Continued from overleaf

STANDING COMMITTEE ON GENERAL GOVERNMENT

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***Vice-Chair / Vice-Président:** Daigeler, Hans (Nepean L)

*Arnott, Ted (Wellington PC)

Dadamo, George (Windsor-Sandwich ND)

Fletcher, Derek (Guelph ND)

*Grandmaître, Bernard (Ottawa East/-Est L)

*Johnson, David (Don Mills PC)

*Mammoliti, George (Yorkview ND)

Morrow, Mark (Wentworth East/-Est ND)

Sorbara, Gregory S. (York Centre L)

Wessenger, Paul (Simcoe Centre ND)

White, Drummond (Durham Centre ND)

**In attendance / présents*

Substitutions present/ Membres remplaçants présents:

Cooper, Mike (Kitchener-Wilmot ND) for Mr Dadamo

Eddy, Ron (Brant-Haldimand L) for Mr Sorbara

Murdock, Sharon (Sudbury ND) for Mr Fletcher

Owens, Stephen (Scarborough Centre ND) for Mr Morrow

Wilson, Gary, (Kingston and The Islands/Kingston et Les Iles ND) for Mr Wessenger

Also taking part / Autres participants et participantes:

Harcourt, Scott, manager, existing stock policy, housing policy branch, Ministry of Housing

Malkowski, Gary (York East/-Est ND)

Marland, Margaret (Mississauga South/-Sud PC)

Clerk / Greffier: Carrozza, Franco

Staff / Personnel: Luski, Lorraine, research officer, Legislative Research Service

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Third Session, 35th Parliament

Assemblée législative de l'Ontario

Troisième session, 35^e législature

Official Report of Debates (Hansard)

Thursday 27 January 1994

Journal des débats (Hansard)

Jeudi 27 janvier 1994

Standing committee on general government

Residents' Rights Act, 1993

Comité permanent des affaires gouvernementales

Loi de 1993 modifiant des lois
en ce qui concerne
les immeubles d'habitation

Chair: Michael A. Brown
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STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday 27 January 1994

The committee met at 0900 in the Hilton Hotel, Windsor, Ontario.

RESIDENTS' RIGHTS ACT, 1993
LOI DE 1993 MODIFIANT DES LOIS
EN CE QUI CONCERNE
LES IMMEUBLES D'HABITATION

Consideration of Bill 120, An Act to amend certain statutes concerning residential property / Projet de loi 120, Loi modifiant certaines lois en ce qui concerne les immeubles d'habitation.

CITY OF WINDSOR
SOCIAL SERVICES DEPARTMENT

The Chair (Mr Michael A. Brown): The business of the committee today is to hear public depositions with regard to Bill 120. Our first presentation this morning will be from the city of Windsor. The committee has allocated 30 minutes to your presentation. Introduce yourselves for the purposes of our electronic Hansard and then begin your presentation.

Ms Dana Howe: Welcome to Windsor. My name is Dana Howe. I'm the commissioner of the social services with the city of Windsor and these are my staff, Peggy Davis and John Durocher. We're extremely privileged to have you come to Windsor and reach out into our communities and receive feedback on the good work the government is doing.

The establishment of the Commission of Inquiry into Unregulated Residential Accommodation in November 1990 was the most praiseworthy and welcome announcement, as was more recently the government's decision to provide coverage under the Landlord and Tenant Act to all residents of domiciliary hostels.

The government is to be commended for its recent action in recognizing hostels within provincial legislation. This constitutes a first step towards formal protection for vulnerable adults who reside in domiciliary hostels. If the vulnerability of hostel residents is to be officially recognized and if vulnerable adults in the province are to receive the protection necessary to their enjoyment of the same rights and quality of life as other citizens, then further steps must be taken to ensure their safety and wellbeing.

In August 1992, Windsor city council endorsed a submission to the Lightman commission outlining 19 specific recommendations, which we have included in an attachment to our presentation.

They are highlighting the following: that the province assume responsibility for regulation; that the province effect regulation through amendment of existing legislation, ie, the Ontario Building Code, Homes for Special Care Act and Landlord and Tenant Act; that the province establish an adult protective services program; that lodging home operators be required to enter into individual lease agreements with residents on an annual basis; that the province recognize the empowerment of the

individual as primary in the development of regulation; and that the province initiate a pilot program within a community where there exists an effective municipal bylaw regulating lodging homes.

Further to the release of the report A Community of Interests, Windsor city council, in September 1992, unanimously supported Dr Lightman's 144 recommendations, including the recommendation that Windsor be considered as a site for any comprehensive community care pilot program. This resolution was communicated to the ministers of Citizenship, Community and Social Services, Health and Housing.

In response, the Minister of Community and Social Services advised council of the government's intentions to review the recommendations of Dr Lightman while establishing an interministerial committee to assess his recommendations.

The Ministry of Community and Social Services then engaged Ernst and Young to conduct a domiciliary and emergency hostel review, the final report of which was released in November 1992. Further to this review, a project to reform the general welfare hostel system has been announced and the municipality has been invited to participate in this project.

Current issues: Our present concerns with respect to what has been accomplished to date relate to three areas: the failure of the domiciliary and emergency hostel review to create an accurate picture of domiciliary hostel residents and the current state of services available to them; the failure of the government to date to seize the initiative presented within the Lightman report, particularly with respect to support and protective services for vulnerable adults in domiciliary hostels; the increased vulnerability of domiciliary hostel residents as a result of the failure of the current long-term care reform process to include lodging home residents within the long-term care strategy.

(1) **Hostel review:** A major and fundamental flaw with the recent and prior reports concerning hostels is the failure to separate domiciliary and emergency hostel residents in both their quantitative and qualitative research. As a result, the service-intensive emergency hostel system has distorted the services picture of domiciliary hostels in general by suggesting more services than actually are provided.

The research is equally flawed in its failure to elicit adequate consumer input. For example, in one major report, seven residents from a single domiciliary hostel constituted consumer input for the whole province, yet the report proceeds to make assumptions with respect to quality of service based on this totally inadequate consumer sampling.

Various reports repeatedly state that the lack of recognition by the province of the key role of hostels in delivering extensive services is a primary issue and that,

as a result, the per diem is inadequate. This statement is founded on the assumption that hostel operators should be in the business of providing services. It is our position that domiciliary hostel residents are part of the community and should therefore have access to generic long-term care services, just as any other citizen. The Lightman report illustrates very clearly the inherent conflict between the profit motive and any inclination an operator may have to provide adequate support services.

In terms of funding, prior reports basically suggest giving more money to operators by way of purchase-of-service contracts with municipalities in exchange for provision of a specific package of services. No specific accountability measures are proposed other than a general statement that new mechanisms should be designed to monitor the effectiveness of programs.

Our extensive experience in administering purchase-of-service agreements with domiciliary hostel operators in a setting regulated by comprehensive municipal bylaw has shown us that direct enforcement of standards aid to ensure the delivery of adequate service when the role is delegated to the operator. However, it is our position that apart from the provision of board and lodging, wherever possible, services should be handled by the community agents other than domiciliary hostels operators. Only then can the integrity of support services to vulnerable adults in domiciliary hostels be protected from conflict of interest.

A further conflict exists with respect to the administration of personal needs allowances by domiciliary hostel operators. Recent changes to family benefits legislation have facilitated the payment of personal needs allowances directly to operators as opposed to residents.

Windsor city council recently petitioned the Ministry of Community and Social Services to take action to redress this problematic situation. For its part, the Windsor department of social services has intervened to ensure the direct delivery of personal needs allowances cheques to subsidized residents. However, there is nothing in place to protect the interests of privately paying residents or domiciliary hostel residents on a provincial scale.

(2) Complementary legislation and support: The action of the government in expanding the Landlord and Tenant Act, the Rent Control Act and the Rental Housing Protection Act to cover lodging homes is consistent with the recommendations of the Lightman report in that it thereby recognizes lodging homes as residential, as opposed to institutional, facilities. With Bill 120, the government has taken a positive step in this direction.

What should follow, however, as suggested by the Lightman report, is the expansion of other pieces of existing legislation so as to ensure the safety and wellbeing of residents, ie, the Ontario Building Code, the Ontario fire code, the Planning Act and the Health Protection and Promotion Act.

The government is to be lauded for ongoing action undertaken over the past two years in respect to the development of the Advocacy Act, the Consent to Treatment Act and the Substitute Decisions Act. It is our position, however, that further action must be taken in

respect to the creation of protective services for vulnerable adults. The Lightman report has proposed a bill of rights, a rest homes tribunal and the mandatory reporting of abuse of vulnerable adults. In its submission to the commission of inquiry, Windsor city council went even further in proposing an adult protective services program, the administration of which should fall under the Ministry of the Attorney General.

We also identified the need for a pilot program and for the location of one such program in the city of Windsor. We are sure you have taken note of the fact that the Lightman report has several references to the city of Windsor. In one instance the report commends "the efforts of the Windsor social services department to protect rest home residents through active enforcement of that city's bylaw." The positions taken in both this and our earlier submission to the commission of inquiry are based directly upon extensive experience through years of active enforcement on behalf of vulnerable adults in Windsor lodging homes.

(3) Long-term care reform: We do not ignore the fact that lodging home residents, as vulnerable adults, are medically frail or at risk by definition. It is essential, therefore, that all community health services be readily available to them as they are to other citizens who live at home. It would be essential that the single-access system under the long-term care reform include lodging home residents.

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We are dismayed, however, by the fact that the long-term care reform legislation to date has consistently excluded lodging home residents from its target groups. We have been told that the needs of vulnerable adults in lodging homes are to be addressed by government action in respect of the Lightman report. However, action taken to date, ie, Bill 120, can in no way compensate for the exclusion of lodging home residents from long-term care reform.

The virtual shelving of the medically at risk lodging home population in respect to any discussion of long-term care reform has been a running parallel to increased efforts by hospital discharge planners to release heavy care individuals to the care of lodging home operators. Cutbacks in hospital budgets and bed closings are therefore compounding the problems associated with the frail elderly in lodging homes, ie, accidents, including accidental deaths, as a result of the inappropriate placement of heavy-care individuals into lodging homes.

As appropriately classified by the government, through expansion of the Landlord and Tenant Act and the Rent Control Act, lodging homes are residential, not health care facilities. Accordingly, heavy-care individuals should have no place in lodging homes. Yet our experience has proven otherwise as demonstrated by continuous serious occurrence reports involving falls, medication errors, injuries, wanderings and other mishaps involving the frail elderly in lodging homes.

While the municipal bylaw regulates against the admission of heavy-care individuals to lodging homes, it is the operator's obligation to maintain appropriate admission standards. As stated, hospital budget cutbacks

and closures are compounding the problem, along with the fact that the city of Windsor is already underallocated in respect to approved nursing home beds as compared to other municipalities in the province.

Conclusions: While we recognize and applaud the government's recent initiatives as demonstrated by the advent of Bill 120, we strongly urge that further actions are required as follows:

(1) the placement of lodging homes under the umbrella of other existing legislation in order to ensure the safety and wellbeing of all vulnerable residents;

(2) further action to implement the recommendations of the Lightman report, including the establishment of a pilot program in the city of Windsor;

(3) that in the context of both the general welfare hostel review and social assistance reform, the government ensure the separation of services from board and lodging in domiciliary hostels and, further, that the delivery of services be under the auspices of long-term care reform;

(4) that the province include services for lodging home residents within the populations currently targeted by long-term care reform;

(5) that the province recognize the existence of the vulnerable adult population in Ontario and move to empower this group through the establishment of a proactive adult protective services program. This program will include provisions to protect the personal and financial interests of vulnerable adults which includes domiciliary hostel residents.

I apologize for reading this so quickly, but we had 15 minutes and we wanted to put a lot in it, so there you go.

Mr Bruce Crozier (Essex South): Ms Howe, you've given a very complete and concise report which seems to be centred basically in one area and that's the domiciliary lodging homes. It's my understanding that this committee has heard a number of comments, and I wonder if the city of Windsor would not have some with respect to basement apartments. Before our time runs out, I just wondered whether you had any comment in that area.

Ms Howe: We restricted our comments to the lodging home area today. I'm not here to speak to that issue as far as Windsor's position on that area. I'm sure some position will be sent in on that, but not as far as we're concerned today. With the very restricted time limit that we had, with the very extensive experience we have in this area and with the very vulnerable population that we serve here, we felt we should focus entirely on this issue.

Mr Crozier: It's your understanding that the city will comment on that, though, before these proceedings?

Ms Howe: I'm sure they have a position on it. Let me just put it this way: If they have a concern in this area, I assume it will be channelled through appropriately.

Mr Bernard Grandmaître (Ottawa East): If I can take you back to page 8 of your presentation, you say: "Bill 120 can in no way compensate for the exclusion of lodging homes residents from long-term care reform." Can you expand on this?

Ms Peggy Davis: This is particularly evident in the

access system to long-term care reform. People are leaving hospitals and being placed directly into lodging homes, that is, people who require additional care. People are able to go in from the street directly into lodging homes without going through the single-access system that is part of the long-term care process. As a result, you have inappropriate placements of individuals and, as we have said, there are placements coming directly from hospitals who are heavy-care individuals who are really at risk, because there's no guarantee there are going to be nursing services available to them.

Mr Grandmaître: You're saying that this clientele who leave the hospital, these lodging homes cannot provide them with adequate health care services. Is this your concern?

Ms Davis: Yes. Lodging homes are not health care facilities. Also, the community services that are available within the long-term care reform are not necessarily available to individuals who are living in lodging homes. If these individuals are considered living in residential units in the community, it's our question as to why long-term care services are not available to them.

Mr Hans Daigeler (Nepean): This is actually the first time somebody has concentrated on this rather interesting hostel lodging aspect, and I'm just wondering how you define "lodging." So far, most of the presenters who have been speaking about that part of the legislation were talking about residential care homes, and I'm just wondering, when you talk about lodging homes, I guess you're not talking about residential care homes in the way we've heard of before. It's probably a bit difficult to define this. I'm just trying to figure out, do you have in Windsor what we so far have heard of as residential care homes?

Ms Howe: I guess there are many definitions: rest homes, lodging homes, hostels. In our situation, our bylaw defines a person who is in a rest home or hostel as persons who are in excess of four people residing in a home who are unrelated and who are requiring certain services. In our business, in order for us as a municipality through social services to pay for them, they have to have some sort of a medical certification that they require some sort of care to be there.

In terms of that then, the city of Windsor was the first municipality, before the general welfare act even included hostels under the definition for payment under general welfare for being able to pay a per diem, to pay for residents in rest homes, because we found ourselves in a situation in the early 1970s when the psychiatric facilities were depopulated. There were no services put in place prior to that depopulation, so people returned to our community with very intense needs and no place to put them. That was kind of the reason they started to evolve.

We have been very actively involved since the early 1970s trying to put services in place, services through the CAMP program, the Canadian Mental Health Association, to put support programs in place for people and to provide the proper care. But these places aren't nursing homes, and there's been a hesitancy on the part of the government to recognize them at all, because then it's a whole other step of kind of health care. It's kind of the

first step. It's in a continuum of services. It's people being maintained in their home communities in residential services who require some care but don't require nursing care.

For example, the psychiatric, who may be well contained in terms of daily living if they have the proper medication, can live fairly well in the community, but if they're not monitored and don't take their medication, at times can become dangerous to the community. With some supervision at this level and with some very good monitoring to make sure that their interests are taken care of, these people can live in the community quite successfully without other, more expensive, levels of care taking care of them.

Our problem has been that this level of care has never been recognized by the government in any formal way until now, and this is why we're so excited by the mere fact that it has been mentioned here.

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Mr Ted Arnott (Wellington): Referring to page 8 again, you indicate that there hasn't been enough protection for lodging home residents and that the government should do more in that respect. Do you have any concrete examples of what the lack of protection has meant to individuals in Windsor?

Ms Howe: We had a recent inquiry in a death in a rest home in Windsor. What happened was we had a person who was taking narcotic drugs or some sort of drugs during the day in the rest home and there were staff in this rest home who basically did not intervene and watch that he shouldn't be taking these drugs. This went on all day long.

That night, the person was escorted to his room, I believe by another resident in the home, and fell unconscious on the floor at 11 o'clock at night in the hall. He was left to lay there all night long. In fact the floor was washed around him laying on the floor, and he died in that spot on the floor.

What we're saying is that this person was a vulnerable person. He had a psychiatric history. He was in there to be cared. He was abusing the drug that he was taking, but it should have been stopped. It could have been stopped and it wasn't.

We had to participate in an extensive process around this issue. We see that vulnerable people, if the home is not being responsible—and we can't be there night and day. Our workers are in there, but we aren't in an 8-hour situation where we can monitor, or not 24 hours a day.

People who get into the rest home business don't have to necessarily have any background in this business whatsoever, other than wanting to get into this business. If they don't have a dedication to quality services to their customers and have the proper monitoring systems in place, if the drugs aren't properly locked up, if there aren't sufficient staff to monitor those residents in the home so that they're properly cared for, or they themselves don't abuse themselves or abuse others, then they become vulnerable in a place that's there to protect them. Those are some examples.

Ms Davis: Can I give an example? Just a couple of

weeks ago in the freezing cold weather, a frail elderly lady wandered three blocks away from the home in which she was living. In this situation this lady managed to get up the stairs. She wasn't wearing a coat and she was carrying a roll of toilet paper. She wandered into a house and all she could say was, "I'm freezing, help me." It was determined that she didn't know where she lived, she didn't know her name, she was very much at risk. This lady had wandered out of the lodging home. This more or less demonstrates the capabilities of a lot of the people who are in lodging homes.

The fact that the legislation has initiated a process where there'll be a separate lease agreement with each individual—that's fine in a purchase of service. You have to, though, look at the reality. Many of the residents in the homes are not able to negotiate agreements on their own behalf and are not able to determine what services they do require and if in fact they are receiving the services. In Windsor we have in excess of 1,900 residential care beds. We have a wide range of facilities, ranging from 12 beds to 450 beds.

Mr David Johnson (Don Mills): I may have missed the point. I understand the problems, but what is it specifically that you're recommending? Are you recommending that these operators be more highly regulated? Are you recommending that they in a sense be phased out and government take over the services they're doing?

I see here in one place you're recommending that heavy-care individuals shouldn't be allowed to go into these places. I don't know why they are going in there right now if they need the extra care. Is that what you're saying?

Ms Howe: How they get there is that they're in the hospital and there's tremendous pressure on the hospitals to cut costs and a pressure to discharge people as early as possible. There have not been the community services developed to the level of sophistication required to handle those people in the community, so the hospitals are tempted to place people in a facility such as a lodging home because it gets them off their books and into someone else's, and it's not necessarily the appropriate placement. One of the favourite tricks is to place them on the weekend when we're closed and we have no intervention, and then we have to react.

Mr David Johnson: You're suggesting there should be more money for the services.

Ms Howe: No, not necessarily. What we're saying is that there has to be a much more comprehensive approach to this issue, that when you're developing the long-term care reforms, lodging homes have been excluded. A lot of good work has been done by the government in many areas, but what we're saying is that you have to look at the whole picture, the comprehensive picture of the issue.

Lodging homes are a step in the continuum of service progressing from the lowest level, a person serviced in their own home. If they can't be serviced in their own home, then they can be serviced in a lodging home. If they can't be serviced in the lodging home, they may end up in a nursing home, a home for aged or, ultimately, chronic care beds or acute beds. As their level of care

needs changes and elevates, they move along that continuum.

But the beginning continuum step is being ignored, and we're struggling in our municipality. We've tried very hard. Our municipality has a bylaw. We've tried hard for years to monitor this area and it has been very frustrating for us as staff to try to advocate for this continually vulnerable population without a comprehensive service plan in place.

We're using this as an opportunity to congratulate you, to say you've recognized it. For once someone has. Thank you very much, but please include them in a comprehensive process so that they can be protected.

Mr Wayne Lessard (Windsor-Walkerville): Thank you very much, Ms Howe, for your presentation. One of the advantages of having committees come to Windsor, it gives me an opportunity to sit on committees that are involved in doing bills that I'm not involved in and an opportunity to learn some of the concerns about the legislation we're currently reviewing.

I know that Windsor has been in the forefront with respect to issues related to housing and as housing relates to social and medical issues as well. I think that's probably one of the reasons that Windsor was suggested as a place for a pilot project under the Lightman report. That's something we're going to continue to try and have established here.

I know that Windsor as well has had a lodging home bylaw for many years, one of the few cities in the province, maybe the only one. One of your concerns is that the bylaw isn't able to go far enough to address a lot of the concerns that you have because of the powers the city has to pass bylaws in this area. Maybe you could tell the committee about the bylaw the city has and some of the areas where you think the city should have more power that it's unable to put in that bylaw.

Ms Davis: A major concern is the lack of protection of the financial interests of the resident. We deal with subsidized residents and in Windsor they make up less than a third of the population in the homes. There are people in the homes who, as we've described before, are frail elderly who have financial interests and don't have family or alternative resources to be providing them with support. As a result, they are quite vulnerable. There are situations in the courts right now involving people who have lost their money through their living in a residence. That's a major concern, and there's nothing there for protection.

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Ms Howe: In terms of that, when the government made the decision to change the comfort allowance, to be paid directly to the operator as opposed to the resident, this was just putting money in the hands of—if the lodging home operator is not impeccable in terms of being trustworthy and you put all this money that is supposed to go to a vulnerable population within his or her home in their hands, and you have a psychiatric person or an elderly person who can't tell you from day one whether he or she got the money or not, there's an opportunity there for the money to be abused.

We had a situation like that in Windsor last year, where we did a random audit of our clients to make sure that the money they were supposed to be getting, they got. As a result of that, we found that there was a substantial amount of money that was supposed to be in trust accounts and available to our residents that was not there. As a result, charges were laid—a significant amount of money was missing—and ultimately the operator was found guilty.

Right at that time, the government made the decision to give the operators the money directly, across Ontario, and there's no audit being done, from my understanding, of any of these operators by the province, even though funds are being paid directly to operators, to ensure that the clients are getting their money.

I would suggest to you that if you don't do a random audit on any program to make sure there's integrity in the way the services are being provided and delivered, there is an opportunity there for abuse. This is a big opportunity for abuse when you have a population that's vulnerable and a for-profit organization that is receiving the money directly. I would suggest to you, based on our experience of this one operator, if this happens to be a sample of what's going on across the province, you have a major problem there.

The other thing we're concerned about in our agreement, and ultimately the bylaw, is that private people go into these facilities and pay their own way, and sometimes they go in with a significant amount of money. But there's nothing to protect that private person, your mother or my mother or father, going into that facility. If we weren't there as children to protect their interests, there's nothing to protect them from having their money taken or abused if the operator is unscrupulous.

Mr Mike Cooper (Kitchener-Wilmot): Do you have adult protective services here in Windsor?

Ms Howe: No.

Mr Cooper: I know, as the Chair of the standing committee on administration of justice, we did a year and a half on the committee doing the Advocacy Act and we had several presentations from adult protective services from across the province that came in. They wanted to take on the role as advocates from the province, have the province hire them. My question to you, being as you've mentioned it fairly consistently through here, is, what role do you want them to take on? Signing leases and contracts for the vulnerable adults?

Ms Davis: Adult protective services—if you're referring to a program that there is in Windsor, there's one worker tied to an agency that is an adult protective services worker. We don't see this as the answer. This is not a comprehensive program.

What we attached to the Lightman report was extensive information on the adult protective services program in Michigan, which is delivered under the department of social services for the state of Michigan. It is very complementary to the legislation that has been enacted, the Advocacy Act and the Substitute Decisions Act. You can have the legislation, but you need the program in place to ensure that the legislation is being applied where

it was intended to be applied. Putting one worker out in the community to service hundreds and hundreds of people is not the solution.

Ms Howe: I think that the short answer to that is, we do see that an advocate is needed for the client, but it has to be in a more comprehensive process. The advocate has to have the opportunity to do something about the problem when the problem is there. So the advocate has to have kind of a network of services that the advocate can connect to, to ensure that when the problem erupts, a solution can be found. An advocate, as a voice in the wilderness, is not doing the client any good.

The Chair: Thank you. You've been most helpful. The committee will be considering this bill clause by clause during the week of March 6.

HOUSING INFORMATION SERVICES,
LABOUR COMMUNITY SERVICE CENTRE OF
WINDSOR AND ESSEX COUNTY

Ms Judy Lund: Good morning. First of all, I would like to thank this committee for taking the time to hear petitions from across the province, and also for allowing our organization the opportunity to speak on this very important issue. I'm here representing the Housing Information Services of Windsor and Essex county and in support of the many other groups from across the province that are in favour of this legislation.

Housing Information Services is a non-profit service provided in this community to assist people in finding appropriate and affordable rental housing. We are sponsored by the Labour Community Service Centre, a non-profit, locally based, community organization whose board is comprised of local labour and community activists who are interested in improving the quality of life for all residents of Essex county through various endeavours: non-profit housing—townhouses for the community and seniors' apartments—child care services, a proposed community-based health care centre and our full housing information service. I'm the director of the Housing Information Services.

Our board is involved in these broad areas, as it concurs with and supports the Ontario Premier's Council on Health, Wellbeing and Social Justice position that good health is a resource for improving your standard of living and that good health is encouraged by the positive development in all of one's areas of life: the workplace, your home life, your education, social networks etc. The board has taken it upon itself to help develop and operate programs which can address these various social determinants of health, again with the aim of improving the quality of life for all in this community.

Our organization was therefore very pleased to see the initial Bill 90 and subsequent Bill 120 initiative which will increase residential rights across Ontario. As our experience lies mainly in the area of private rental and subsidized housing, my comments will mainly focus on the as-of-right component of this legislation, in particular accessory apartments and garden suites.

Society in this country has been changing over the last 40 years. In Ontario, from 1951 to 1981, while our population increased by 87%, the number of new households increased by 152%. Social change is continuing to

occur across Ontario; it will not stop or go away. Our neighbourhoods are not static but are ever-evolving communities which need to continue to evolve so as to better house our current and future populations.

Who is this population? A greater proportion of non-traditional households; smaller households, often with lower incomes; and a greater total number of households for a same-size population, seeking appropriate and affordable housing in municipalities where raw land for development is running out.

Renters have consistently formed one third of Ontario's total housing population. All renters deserve to have the same rights and privileges under our laws as home owners. Some of the apprehension over this legislation is perhaps an image of who the renter is—young, transient, noisy etc. However, tenants themselves represent a cross-section of the population. Almost one half of tenants are 35 years of age and over, one fifth are over 55 years. In 1981, approximately one third were single-person households; however, one third had family and children.

In short, tenants are just like you and me and are simply in a different stage of life than home owners. Tenants themselves, like home owners, if allowed options, will choose to move into neighbourhoods which they find attractive, for many of the same reasons that a home owner would. Tenants can value the neighbourhood community as much as a home owner and deserve to have this option.

Historically, illegal conversions have been for the most part accepted by communities but have been denied legal status. This is a very dangerous trend, as it leaves both the landlord and tenant at risk. Owners are subject to being reported by uncooperative neighbours and having their units closed down, with little other option. Tenants have no benefits from improved codes and regulations that we've had over the last 10 to 20 years. As we've seen in the past, if regulations remain too stringent, then illegal units will continue to be developed, leaving people at risk, as there are no standards through which they can seek protection.

Under this new legislation, people living in illegal and legal apartments will be protected under the Landlord and Tenant Act, the same act which governs tenants currently living in larger apartment buildings. Tenants living in illegal apartments have the same right to protection as tenants living in larger apartment buildings and large rental complexes.

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This legislation will give all tenants an opportunity to speak up without the immediate threat of eviction and closure of their home. Legalizing apartments will increase the likelihood that owners will comply with regulations if they can market the unit in cooperation with the municipality rather than being forced to close it down. There will be protection through fire and building code revisions which owners have historically enjoyed. The municipality will have increased powers of entry in order to ensure these units meet relevant codes.

Accessory apartments will increase the choices or options available to people who require affordable

housing. In a province where we feel that housing is a right and not a luxury and where renters consistently form one third of the population of Ontario, we need to ensure that all people have access to housing and options for the different stages of their lives.

Across Ontario it has been found in general that accessory apartment rents are lower than conventional building rents. We find this in the case for our home sharing program which the Labour Community Service Centre has operated for the past four years for the city of Windsor. That's where people rent out space within a person's own home but there's no capital cost for construction and separating the home.

The average rents in this area range around \$300 to \$350 a month, which are lower than we find in private buildings. We feel that lower rents will be developed within accessory apartments as well, and our Housing Information Services certainly finds that the people coming to utilize our services are having difficulty finding rental accommodation because there aren't the significant number of units in the income ranges and rental ranges they can afford.

One of the aspects that we found is many renters in this area are in need of lower-priced rental accommodation because their incomes do not keep pace with the cost of living and therefore they are having more of a difficult time now than they had five or even 10 years ago.

The development of this type of housing can help to stabilize neighbourhoods. Legal apartments will pay their fair share of taxes. They'll encourage renewal of older housing stock. We'll see an increase in the number of people utilizing the current neighbourhood infrastructure: sanitation, public transit, neighbourhood schools etc.

Many neighbourhoods were built for much larger populations that now exist or are expected to exist in the future due to changing demographics. This will help to increase this proportion again. However, as the proportion will most likely never reach the numbers they were originally intended for, there should not be any real concern over the issue of overcrowding.

Overconcentration has, however, been addressed by allowing only one unit as of right in each home, thus allaying some fears of massive change in neighbourhoods. It has been found that approximately 12% of home owners would consider this option.

This means that only one or two units in a block might be converted, no large significant turnover of units or large numbers infiltrating neighbourhoods, as in the past when large apartment buildings were built up into existing single-family neighbourhoods. This 12%, if ever attained, would not happen all in one year but over time, as has been the case in cities which have allowed this type of housing.

Since it's expected that most of the conversions will be made by the home owner, the same standards for housing and upkeep will be maintained. Home owners who have the opportunity to pick their tenants, and therefore their most immediate and closest neighbours, will most likely pick ones who are of good character, are reliable and who closely reflect their own living standards. Again,

with options made available to them, thus allowing tenants the ability to choose where they will live, many will choose a neighbourhood for the same reasons as a home owner and therefore will also value the standards and upkeep of the community at large.

We feel that home owners who choose to convert their units will do so because they likely already have the required space available within their own home. Extra costs associated with exterior changes will in all likelihood be avoided in most cases. Therefore, concerns over major changes to homes in area neighbourhoods remain unfounded.

Municipalities still have rights with respect to percentage of lot coverage on a given parcel of land, just as they do with a single-dwelling unit, and therefore can control this area of concern. Illegal apartments already exist. They, for the most part, already blend into the larger community. History should therefore allay fears people may have with respect to large changes to building structure etc. Legislation like Bill 120 which serves to revitalize neighbourhoods can help maintain and perhaps in the long run help to increase property values.

Our organization specifically has learned through our involvement with the home sharing program that, while most seekers and housing providers apply to home share for monetary reasons, many learn that there are numerous other benefits to living in close communities, such as security, companionship and assistance with everyday tasks, benefits which to a large extent we have lost in our fast-paced, fragmented society, particularly people of low and modest incomes who we found, through our experience in non-profit and cooperative development, don't typically have a lot of the support networks other people might have and therefore need this type of community involvement.

This type of housing falls in line with the thinking under the long-term health care reform by encouraging people to stay within their own communities and have opportunities for neighbourhoods and social structures to continue to play a large role in their lives. It encourages seniors to stay in their homes longer with viable financial and community assistance. They can also help current home owners to keep their homes and help young couples as they endeavour to purchase and afford their own homes.

Speaking of home-sharing, we have operated this program in the city for the past few years now. We've typically maintained a list of 50 to 75 providers who are interested in sharing their homes in the entire municipality. There are normally 10 units listed in the paper, approximately, and we've matched about 40 people in one year in the community. The Ministry of Housing stats show that twice as many people would consider home-sharing as undertaking the expense of converting their home. So again historical statistics do not indicate the great influx of units and people of which some communities are afraid.

Accessory apartments across the province can help to decrease urban sprawl, as they can help to save farm lands by using existing housing stock better, and decrease the need for extensive car travel as people will live closer

to work. As an offshoot, city transit can become more appealing and cost-effective, and this is something this municipality has struggled with severely over the last few years.

There will be no large additional government costs in order to implement this type of housing. Therefore, we are increasing affordable housing options, putting money into individual taxpayers' hands and saving the general taxpayer money with that type of housing.

In general, the present laws are not working. There are over 100,000 existing illegal units in this province. The most efficient way and fair way to deal with them is to legalize them and regulate them.

While it once may have been seen as an ideal to move into a neighbourhood of your peers, people like you in a family environment, we are now beginning to understand that this type of thinking, perhaps unintentionally, promotes discrimination.

Two-parent home owner families are not the only type or the main type of family which exists today and maybe never really were. We should understand that all people want the opportunity to live and raise their families in safe, affordable housing, whether that be rental or home ownership, regardless of what their family or household looks like.

All people should have this right without unnecessary obstacles being placed in their way. We cannot continue as a society to endorse policies which discriminate against households which do not conform to what we think constitutes a stable community.

Our organization firmly believes that no municipality should be allowed to restrict the number of people living in a unit based solely on the relationship of the occupants. While attempting to regulate a housing unit type, what this actually unintentionally perhaps does is regulate what a household or family is or what one should be to be allowed to fit into a neighbourhood.

This older form of legislation discriminates against non-traditional households. It establishes a barrier to the segment of our population which is currently in the greatest need of affordable housing: singles and small families. They're typically the people we see on a daily basis in our organization.

Singles who choose to live together in order to save money and live in a more expensive community should be allowed to do so. Seniors who choose to convert a portion of their home, as they no longer use it, they need the extra money, or for whatever reason, should be allowed to do so.

If this legislation is passed, we would like to encourage the Ministry of Housing to facilitate a means of landlord and tenant education to ensure that everyone is aware of their rights and responsibilities under the new act and under the Landlord and Tenant Act. There are many active housing groups across the province—ours, for example, is only one of several groups locally—who would be more than willing to become involved in community education to ensure people's rights are understood and respected through this new legislation.

While we do not feel there will be the great influx of

units which some municipalities are concerned about, we would encourage the ministry to consider allocating greater funding and resources to the municipalities in order to carry out their work ensuring that these units meet fire, building and safety standards.

We would also encourage the Ministry of Housing to continue its current trend of regulating rental units by decreasing the threshold on the number of units within a complex which allows the unit to be registered under rent control. Previously, only complexes with six or more units had to be registered. Recently, this threshold has been reduced to four or more units. We think this is a positive trend, one that should be continued and should eventually include all units, including apartments in houses.

We therefore respectfully endorse the province's Bill 120, particularly with respect to the accessory apartments and the garden suite legislation.

Mr David Johnson: I would like to congratulate you on that presentation. You've said so much, one hardly knows where to begin. Partway through I think you were talking about home owners picking the tenants for the accessory units, basement apartments or whatever, and indicated that they would pick with great care and that the tenants would maintain the community standards.

One of the problems that we've heard from some of the municipalities—and I think this came up yesterday. One municipality indicated that about 25% of the units were non-owner-occupied. In other words, the owner was absent. A great number of the problems occurred in this regard, where the owner was not there and the owner sometimes was difficult to get hold of. I wondered if you had any thoughts on that.

0950

A number of the municipalities are actually saying, "We support basement apartments, we support accessory units, but there need to be some conditions." One of the conditions that they're talking about is that the units should be owner-occupied.

Ms Lund: First of all, if you're saying that 25% of the units are non-owner-occupied, that would mean then that 75% are owner-occupied. So I think that alleviates for the most part the majority of their concern, that three quarters of the units are going to be maintained by owner-occupied people.

I think for the 25% that are non-owner-occupied, the majority of the people who are purchasing these homes are doing so for financial reasons. I think it's in their best long-term interests to maintain these units as well and fit into the larger community, because if their units become run down, there won't be the financial gains and the capital gains that they are looking for within that complex.

I understand that a lot of people have raised this concern, but what we're finding is there really are no empirical data to support the fact that tenants have any less likelihood of taking care of the units or have any less concerns as to what the community looks like and how the community is maintained. In fact, tenants really reflect their greater community, just like you and I, and

really want a nice place to live in.

What we're finding with people who come into our organization on a daily basis is that many of them are very concerned about the areas that they're going to live in. One of their greatest concerns is that their choices are limited because of their lack of income, and they really have concerns perhaps if they have their own children as to what their community is going to look like.

While there may be that concern, that's again thinking that tenants are just one type of population when they're not. They really are people of any age and of any family status, and really have the same concerns and long-term interests that home owners do.

Mr Lessard: Ms Lund, I know that you've done a lot of work to increase the supply of safe and affordable housing in the city of Windsor, and you're to be commended for that. You've indicated a number of advantages of Bill 120 as it relates to apartments in homes. You know as well that there are many areas in the city of Windsor and there are people on city council who don't see those same advantages, and this is going to be a bit of an uphill fight to get them to buy into Bill 120.

You mentioned that there needs to be some community education as well, because not everybody recognizes those advantages. I wonder what elements or aspects you would see as part of that community education plan.

Ms Lund: I think there are several organizations I can use. Just locally, for example, there's a very active tenants' organization, the Federation of Windsor-Essex County Tenants Associations, there's the local rent control office and our Housing Information Services.

What we try to do is work with tenants who come in and make sure they understand the information as to what's available to them. One of the items I find that's really difficult for people is the fact that legislation is often confusing. It's often in languages which are at a level that is a barrier to the community.

One of the first things I really strongly push for and my history in the cooperative sector has been very strong in advocating for is, first of all, plain-language material, which means material that's written such that anybody with a grade 6 or so education could really understand what his or her rights are.

I think one of the problems that people run into is that people don't understand their rights and aren't aware of how to go about finding them. That intimidates people and allows people not to really access their rights and act on them.

Right now, between our three organizations, we already try to do a lot of education out there with the public. I think that has to continue. I think as well landlords need to know their rights and responsibilities. For example, we have a lot of landlords we work with and tenants who, when they move in, don't sign a lease. When they move in, they have verbal agreements and really have to remember and rely on what he said she said he said she said. We think that's really not good for anyone, the landlord or the tenant.

What we developed with a group out of Chatham is a plain-language lease so that everybody can understand

when they move in what their rights are and what their responsibilities are. We think that really education and support so that people know, if they have a concern, how to access the information and how to access services and make sure that's available to them.

Mr Stephen Owens (Scarborough Centre): In terms of the concerns that have been raised with respect to zoning by owner occupancy, I appreciate your comments. I'm curious to know why the opponents of this kind of legislation feel it's appropriate that you would have to have two different kinds of zoning by occupancy or two pieces of regulatory language to govern how the occupants of a dwelling conduct themselves. I'm quite pleased that your view is in line with mine and my government's.

Ms Lund: I would like to add to that. In our history with the non-profit and cooperative sector, we ran into a lot of historical ideas as to how people conduct themselves.

Mr Owens: Prehistoric.

Ms Lund: One of the things we found find is that a lot of the fears people have are not necessarily founded in what really, actually happened. People have a fear about a non-profit or co-op coming in, "Those types of people won't take care of it." We've heard: "Our crime will increase. Our traffic will increase." The director of my organization had his life threatened the first time we actually tried to do a cooperative in this area.

We had the RCMP at the city council meeting. People were really nervous. I think it's really just the fact that people are afraid of change. People have historic ideas as to, for example, what renters are. When you think of a renter, most people think of somebody noisy and young. What ends up happening is that what we are able to show through the development of non-profit and cooperative housing is that these types of communities can fit into the neighbourhood. The people who move in quite often, I find, are so happy to live in a nice environment that they take care of it, and they're pleased, because they understand that their choices are limited because of their lack of income.

Mr Owens: That's the idea. That's right. They are developing a sense of community.

Ms Lund: So they want to have the same community and they want the same place for their children as well.

Mr Crozier: Do you have a parking problem in Windsor?

Ms Lund: Not necessarily.

Mr Crozier: Not necessarily. That's not what I hear. This would certainly exacerbate that to a great degree. More importantly, this is an omnibus piece of legislation that covers a number of areas, and it's good that we're getting at each one this morning.

I want to make a comment with regard to small urban and rural municipalities. This seems to be a city problem, and so being, when you put this kind of legislation in, particularly when you speak of the as-of-right portion of this, I feel that some consideration should be given to municipalities being the ones which can determine the need best and which therefore can also attempt to solve the problem best. I wonder if you might comment on that

with regard to your position on the as-of-right position.

Ms Lund: Yes. With respect to parking, I think there's a perception that there's a parking problem. I grew up in the downtown area. I've rented in this community. I've lived my whole life in this community. I have my whole family living in this community. I have purchased a home in the downtown area.

I think there are, by and large, in this community large perceptions of parking problems. I think parking is becoming a universal problem and I don't think this necessarily will extend that problem beyond the proportion it's already going. One of the studies that has been done on this legislation has found that in fact there are parking alternatives in a lot of communities. While people complain about parking issues, many of them have never been forced to park illegally and so have found other alternatives.

With respect to it being a city problem, our service now is involved in the city and the county. One of the things we're finding in the county is that there is really no rental housing. Windsor has a problem with affordability and quantity, supply of housing, but the county really just has very little rental housing at all.

Mr Crozier: Oh no, excuse me. you should look at the vacancy rates in the county. I think you're mistaken.

Ms Lund: The vacancy rates in some of the communities are high and in some of the communities are low. For example, Belle River, Amherstburg and Essex are very low. Leamington has had a high vacancy rate. But what Housing Information Services is finding is that these vacancy rates are on the higher-end units. They're not on the lower-end units where most of the incomes need. That's why it's important to have legislation like this, to have units that are affordable.

As for the municipalities determining where the need is, I think this legislation has encouraged municipalities over the last couple of years and a lot have not taken up on it. What I think it does is encourage home owners and the actual taxpayers and the market to determine where the need is in each community, giving the control back actually to the people in the community.

The Chair: Thank you very much for appearing this morning. The members will take your brief into consideration during the clause-by-clause during the week of March 6.

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FEDERATION OF WINDSOR-ESSEX COUNTY
TENANTS' ASSOCIATIONS
LEGAL ASSISTANCE OF WINDSOR

Mr Tony Mandl: First of all, I'd like to thank the committee for allowing us to come and speak today regarding Bill 120.

My name is Tony Mandl. I am a law student at Legal Assistance of Windsor and I will be presenting a joint brief on behalf of the Federation of Windsor-Essex County Tenants' Associations and Legal Assistance of Windsor. With me are Joe Krall and Carol McDermott, both of whom may assist me in responding to any questions you may have.

Mr Krall is the executive director of the Federation of

Windsor-Essex County Tenants' Associations or FOWECTA. This organization was founded in June 1990 out of a concern for the growing number of complaints and disputes between residential landlords and tenants and the need for an advocacy voice for the some 20,000 tenant households in the Windsor-Essex county area. FOWECTA now rents space from and has its office within the office of LAW, although the two organizations remain independent.

Ms McDermott is a lawyer with Legal Assistance of Windsor who specializes in landlord and tenant matters and is also on the board of FOWECTA.

LAW was established two decades ago as a storefront legal clinic in downtown Windsor and provides representation for tenants who cannot afford private legal representation.

Many of the clients of Legal Assistance of Windsor and the Federation of Windsor-Essex County Tenants' Associations are similar. LAW's clients must meet a means test, while those of FOWECTA don't. However, we do find that many of FOWECTA's clients are of limited means and the clients of both agencies frequently experience additional disadvantageous factors such as physical or mental disability, dislocated family status, immigrant or refugee status or advanced age.

LAW and FOWECTA wholeheartedly support the passage of Bill 120 and urge this committee to move with dispatch to ensure its passage.

The Landlord and Tenant Act and Rent Control Act have been amended in recent years to extend and strengthen protection to some tenants. However, we still much too often are consulted by clients whose premises are excluded from coverage of the Landlord and Tenant Act or the Rent Control Act. They have few rights, and those they have are difficult and sometimes risky to enforce. Furthermore, we are certain that there are many even more vulnerable tenants who never seek help because they are either not aware they have any rights or have given up any hope of redress.

Bill 120 provides hope that many of the current abusive situations will be limited by extending legal protection to thousands of renters now occupying illegal units or living in circumstances in which their landlord also provides some form of service in addition to accommodation.

Tenants living in apartments in houses often want to remain in their unit because they have chosen its location for specific reasons and have become part of the local community. Seniors may want to stay in a familiar neighbourhood close to friends, transportation, medical facilities or whatever services attracted them to the locale. Single parents living in apartments in houses may chose to do so because of access to schools and ease of transportation. Some find the apartment in a home provides a sense of privacy and security not available in high-rises.

Permitting low-cost apartments in all kinds of residential neighbourhoods will break down barriers between cultural, ethnic and economic groups, thereby promoting a greater sense of community and a rich, diverse character.

Additionally, a better distribution of city populations makes economic sense because it will result in a better and more efficient use of existing utilities. By permitting slightly higher density in areas traditionally reserved for single-family homes, there will be better use of hydro, heating, sanitation and public transit.

Apartments in homes will also be more environmentally friendly since they will permit more efficient use of energy and heating within the house, greater and more efficient use of existing services like public transit, and the apartment dweller will be able to make use of the blue box recycling programs existing in many residential neighbourhoods.

Proposals for intensification always raise concerns about parking. However, we submit that the changes articulated by Bill 120 will have little or no impact on parking. We certainly admit that there are parking problems now, which long predate the introduction of this legislation. Municipalities generally have not adequately planned for sufficient parking spaces anyway.

There are already many people living in illegal units who have cars. Legalizing these units will not add new vehicles to city streets or driveways. Even if Bill 120 encourages the construction of new apartments in homes, many of these tenants will not own vehicles because they have chosen a modest dwelling precisely because their limited income will not afford them a car.

In those cases where new tenants bring their cars into residential neighbourhoods, traffic will not likely increase, because many of them are able to move into private homes only when a son or daughter of the home owner moves away to college or university, taking along a car anyway.

Generally speaking, then, we can say that tenants living in apartments in houses presently deemed illegal often want to remain in their unit because they have chosen its location for specific financial and social reasons and have already successfully integrated themselves or their family into the local community.

However, no unit is perfect and even tenants generally happy with their apartments do occasionally inquire about their rights and sometimes make requests of their landlord to make necessary repairs. A tenant's innocent request for an inspection by a city official to determine whether the premises are safe or adequately maintained too often prompts the discovery of an illegal unit. This sets in motion a chain of events that culminates in the tenant being evicted rather than being helped.

Having heard of such a circumstance once, a wary tenant may become very reluctant to take any steps to enforce rights for fear that such steps may backfire. This problem could be minimized by legalizing one apartment per house as of right.

FOWECTA and LAW commend the ministry for introducing these progressive measures in Bill 120. We have some comments which we hope will assist in its implementation.

Rights are not rights without remedies. There is not much value in ensuring that tenants can remain in newly legal units if they cannot take the necessary steps to

ensure that those units are safely and properly maintained. Therefore, it is essential that municipalities provide adequate resources so that inspectors can respond to tenants' requests for assistance promptly and follow through with notices of infractions, work orders and prosecutions.

We do not, however, advocate an increase in their powers of search and seizure. Too often, our clients complain of lack of privacy and security because of landlords' intervention in their lives, and they are afraid to request an inspection by a building inspector for fear their apartment will be declared illegal.

Even if a unit will not be declared contrary to zoning bylaws because of the amendment by Bill 120, some tenants will fear, rightly or wrongly, that the inspector will condemn the premises or perhaps discover that it is not the only additional unit in the building.

Our experience tells us that there are enough substandard rental units in the city that building inspectors' time would be better spent attempting to respond to tenants' requests for assistance in a timely fashion rather than acting as an independent enforcement arm by barging into premises where no one has requested their assistance.

City inspectors should be in the business of serving residents by upgrading buildings, and not closing them down and displacing tenants. Ultimately, city inspectors would be able to spend less time investigating and more time enforcing building and health and safety codes, giving inspection a more preventative role.

Once the apartments in houses become legal, they will of course be subject to the increase and notice provisions of the Rent Control Act. However, because they exist in buildings with fewer than four units, they will not be subject to the registration provisions of the Rent Control Act. This is a weakness that could be addressed by amending the Rent Control Act to require the registration of all rental units. The registry would serve as an information base easily accessible to all prospective tenants. Without registration, it is almost impossible for a tenant in an apartment in a house to determine what the legal rent is or when it was last increased.

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I will now turn to the issue of care homes. We support the inclusion of care homes in the Landlord and Tenant Act. Too often tenants in care homes are the most vulnerable, because they are dependent upon their landlords for some form of assistance in managing their daily lives. Even if a tenant has the rights available to most other tenants, such as security of tenure and the right to adequate maintenance, if the tenant fears that an attempt to enforce that right may prompt a withdrawal of service, the right then becomes illusory.

We have some suggestions to improve the manner in which Bill 120 proposes to address this issue.

We maintain that the cost of additional services, such as a meal plan, must be subject to registration and control. If the cost of services is registered without increases being controlled, we fear that landlords who can no longer increase rent at will may just tack the increase on to the cost of services. The guideline amount of rent

increases is not appropriate for other care, so we would suggest a reasonable figure be determined based on the annual cost-of-living index.

Once controls have been placed upon the amount of increases available for rent and care services, we fear that the quality of care may be varied in order to reduce the landlord's costs. Therefore, in addition to the disclosure provision of section 9.1 of the bill, we would propose adding a remedy under the Rent Control Act whereby a tenant may apply for a decrease in the cost of additional services when the quality or cost to the provider has decreased.

The bill does create an offence for making illegal increases in either rent or charges for care services or meals to a tenant of a rental unit in a care home. We applaud this provision and think it is essential. However, we would like to see it go further.

Threatening to withhold care services can very effectively prevent a tenant from exercising any rights. For example, a landlord who doesn't want any opposition to an illegal increase may merely threaten to reduce a resident's meals to all but bread and water if she complains, or tell a quadriplegic who cannot get out of bed alone that attendant care services may become unavailable. Therefore, we recommend that withdrawing services or threatening to withdraw them be made an offence punishable on summary conviction under the Provincial Offences Act.

We are also concerned that despite the changes proposed by Bill 120, the Landlord and Tenant Act will still not be extended to cover rooming and boarding houses in which kitchen and bathroom facilities are shared with the landlord or his or her immediate family where the landlord is the owner.

There are landlord owners of rooming and boarding houses who cater to or in some cases prey upon vulnerable transient populations and ex-psychiatric patients. By living there themselves, they totally exempt the premises from the act. The most manipulative landlords often take the tenant's disability cheque, deducting directly for rent, meals, prescriptions, and allotting the tenant only a small amount for, say, cigarettes.

These tenants are some of the most vulnerable, because a complaint or a small delay in rent payment too often results in a garbage-bag eviction, when a possibly disabled or aged tenant is instantly thrown out of the building without any warning. We suggest that this exemption from the act be narrowed to exclude situations in which more than one roomer or boarder lives with the owner.

We agree that the demolition, conversion or renovation of care homes must be made subject to municipal approval, because we think the municipality has an important role to play in monitoring the number of units available and ensuring that any change in that number is effected in an appropriate and well-planned manner.

We suspect that some landlords of apartments in houses and of care homes may unnecessarily fear this law in the mistaken belief that it will force them to continue to rent to unacceptable tenants. We would offer to them a simple solution: Read the Landlord and Tenant Act and

the Human Rights Code. They may indeed find themselves living in proximity to people who display remarkable cultural differences. However, they do not need to continue to rent to a tenant about whom they have a valid reason to object.

For example, if the tenant is persistently late in paying rent or behaves in ways that disturb the landlord's or other tenants' reasonable enjoyment of the premises or if any of the other grounds for legal eviction exist, all the landlord has to do is follow the precise steps laid out in the Landlord and Tenant Act to evict that tenant.

Rights without knowledge of them cannot be enjoyed, let alone enforced. Since many of the people most likely to benefit from these changes are particularly vulnerable and may be easily intimidated, it is important that extra effort be made to make them aware of these rights.

Section 111 of the Landlord and Tenant Act requires that a landlord post a copy of part IV of the act or the summary provided in the regulations in premises that have a common space and more than one unit. We recommend that a similar but appropriately tailored requirement be added to apartments in houses and care homes. A landlord should be required to prove that the information about rights and how to enforce them was provided to a tenant by producing a tenant's signature evidencing acceptance.

In conclusion, we wholeheartedly support legalizing one apartment per house and extending the protection of the Landlord and Tenant Act and Rent Control Act to tenants receiving care services from their landlords. We do not support an increase in search and seizure powers of building inspectors. We think the controls on the cost of services need to be extended and we would support an extension of registration of all rental units under the Rent Control Act.

Finally, we applaud this effort to empower those most vulnerable members of society by granting to them similar rights to those enjoyed by most renters. This is a significant step along the path to social justice for all.

Mr Lessard: I know of the work that Legal Assistance of Windsor provides in the community as a former student who worked there during law school, and I'm glad that you're involved in this issue as well. I was interested in your comments about increased energy efficiency and the environmental impacts of increasing the numbers of apartment units in homes, so I thought that was an interesting advantage as well.

You also mentioned the fears people have that there might be an explosion of these units constructed in single-family homes. Do you think that fear is real or do you think that is something that may happen?

Mr Mandl: First of all, Bill 120 will simply legalize and recognize the fact that there are many units that already exist within homes, so in that sense those flats within homes already are in existence and will not result in any sort of explosion. There probably also is already a market saturation for low-cost apartments within houses. I don't see that it would result in rapid expansion or conversion of residential homes for use by low-income residents.

Mr David Winninger (London South): I thank you for your presentation. I thought you made a number of very valid points. What gave me pause and caused me some concern, however, was your position on increased inspection powers, and I say that for two reasons.

One reason is that Bill 120, by allowing as-of-right apartments, provides, we feel, greater incentive for landlords to bring their properties up to basic safety and health and property standards. I don't think we're doing vulnerable and other tenants any favour by allowing them to live in accessory apartments that don't meet those standards.

The other reason I say that is that notwithstanding that we have other legislation that will provide advocates and make it easier for substitute decision-making and community supports, notwithstanding all that, there are always people who seem to fall through the cracks, who can't assert their rights, who won't make complaints to the city inspectors and health inspectors, and it would concern me if those people's needs go unmet simply because there are people out there who aren't prepared to enhance inspection powers.

That's the problem with a complaints-driven system, I suppose, that there are people who aren't assertive enough to complain. Could you comment on that?

Ms Carol McDermott: My main concern is that there are not enough resources for building inspectors to do as much in terms of assisting tenants and upgrading the units that the tenants want upgraded. If we ever got to the point where we had building inspectors like Maytag repair persons, we could then say, "Okay, let's send them out on a really proactive basis and have them searching out units that need to be further upgraded." I think instead we have a lot of tenants who are sitting there and saying: "I would like someone to come and inspect. Could you find time to come and inspect?" I think there is a natural deselection process of where people are going to live.

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There are other remedies where the individual lives in a unit that's so totally unacceptable that someone needs to go in and get them out of there. I don't think building inspectors are necessarily the appropriate people to do that. I think there are enough powers now that can manage to do that. Rather, I'd like to give tenants some security to know that they won't likely have a building inspector coming in and searching out their premises and closing it down unless they first call the building inspector and say they want it.

We see a lot of people who are afraid to call a building inspector. We're quite content to go to court for them and commence an application to have their premises upgraded, but we really want evidence first, and the best evidence would be from a building inspector. They're afraid to call the building inspector because they know, if it turns out to be an illegal unit, that they are going to be out of there and also they don't have a remedy if their units are illegal.

Mr Grandmaître: Let's talk about conversion. How difficult is it in the city of Windsor or the county to

legalize or to legally convert your single home into an accessory apartment or create an accessory apartment? How difficult is it, or how easy?

Ms McDermott: I can't answer that because that's really something a landlord would want to do and we don't represent landlords.

Mr Grandmaître: No, I'm talking about the municipal bylaws. Are they accommodating the population or the landlords if they want to convert legally?

Ms McDermott: I don't know how accommodating they are. What I do know is that there are many landlords who have converted illegally and we see the tenants who are living in the illegal units.

Mr Grandmaître: You pointed out that every unit should be registered. Who would administer this program?

Ms McDermott: The Rent Control Act.

Mr Grandmaître: No, administer; the city or the province of Ontario?

Ms McDermott: The rent control program. I think they could use the same registration system.

Mr Grandmaître: Where would they register?

Ms McDermott: They could use the same registration system that they have currently. It would just extend it down to one unit per premise. Now it starts at four, so it means you can get information if there are more than four units, but if you're living in a premise with three, or in these circumstances usually with one or two, you can't find out what the legal maximum rent is.

Mr Crozier: I'm going to make one comment on the parking question again. You've said it's not a problem and it won't be a problem. I think it's fairly evident that you probably haven't served on a municipal council because it's a problem in many communities and I think it will be increased if we allow this.

More to the point, and I want to get back to this as of right again, I think that not only do prospective tenants have a right, but don't you think individuals in communities in areas of a town, in neighbourhoods, also have a right? That's why I get back to this point of, why can't it be at the municipal level? Why can't the municipality control this? Why do we have to put the big brush on all this and say, "Just anybody can do it, practically under any circumstances"?

Mr Joe Krall: I believe that in response to the parking issue, we admit it's already a problem. I think to say it's going to become a very big problem because of this will be admitting to the floodgate-type arguments which I just don't see. I believe the fact that the estimates say there's some 100,000 illegal units in this province would indicate that there has been a difficulty in regard to planning for the needs of renters in this province.

I believe that in many municipalities zoning has been exclusionary, élitist, "not in this neighbourhood," and I think the discriminatory practices need to be curtailed. I believe the municipalities have had opportunities to do that and we commend the province for taking steps to stop that now.

Mr David Johnson: Perhaps former mayors are of the

same mind and I'm going to follow up on the same question.

We've heard deputations from across Ontario now, and as I indicated earlier, and you may have been here, what we've heard is support for the concept of basement apartments and support for accessory apartments. I can't recall one deputation, frankly, that spoke on that issue that didn't offer support. What puzzles me a little bit is that there sometimes seems to be an all or nothing kind of an attitude and this is what I'd like to probe a little bit.

For example, we heard from citizens in Hamilton where they have very large homes that are being made into various apartments, a certain situation there. I know in my own municipality of East York we have very small homes. We have small bungalows, very different from the city of Hamilton, a different set of circumstances. We heard from Ottawa, where they have many flooded basements in certain areas and that causes a problem. They're concerned about putting basement apartments in areas like that.

They also express concern about row houses, for example. There are municipalities with very wide lots, municipalities with very narrow lots. The city of Waterloo has a university, and London expressed the same concern, where there are different sets of circumstances.

I guess what they're saying is that they need some local control over this. They're going ahead. Etobicoke, for example, came forward with an apartments-in-houses policy. They did that in 1990. It was submitted to the Ministry of Housing and it still has not been approved. They still have not heard back on this. Municipalities are acting on this and they're acting in the case of their own unique circumstances, because municipalities have a character, they are different.

I'm wondering, in your view, is there no room at all for local municipalities to consider this as a community, the people in the community to consider this and come up with a policy, an approach for these accessory apartments that would reflect the local circumstances?

Mr Krall: If all municipalities were to comply, then perhaps idealistically we could go back to that scenario. I don't believe that's going to happen or that it would happen. I think history to date leads us to believe that not all municipalities are going to do something. I believe that property standards will help municipalities to address where there are some real shortcomings in these units.

Mr Arnott: I'm still trying to get a grasp of the basement apartment situation presently in Windsor. Do you have any idea of how many legal basement apartments there are presently in Windsor, and how many illegal basement apartments?

Ms McDermott: No, I'm sorry, we don't have any handle on the number. If I can respond partly to the question and the previous comments, it's interesting to talk about the broad policy issues in planning and how wonderful it would be if a municipality could sit down and see the future and see all the people and everyone's needs and plan everything.

We see the individual tenants who right at that moment

are being evicted, who want a remedy for them right then. They don't care that the city has the potential to look at the future and make projections and come up with a plan that may or may not conform to what happens in that community in the future. What they care about is that they need a remedy right then and the only real remedy they can get is if they are covered by the Landlord and Tenant Act. Then they can go to court, or we can go to the rent control board. We can get some kind of remedy.

It may turn out that this is not an appropriate community for the apartment in houses to exist. If that's the case, then probably those people will eventually move. It probably will not last for a long time, but at least that tenant will have some remedy to redress at that time, and then the city can go on and do whatever in terms of its planning to make that a more or less attractive area for those people to live in.

Mr Arnott: We've heard some presentations over the last few weeks of municipalities, as well as landlords, concerned about situations that may arise where a tenant becomes extremely unruly and may be a threat to some of the other residents in a building. I think most of us agree there should be an opportunity for eviction at that time.

You, I assume, provide legal advice to tenants who are facing eviction and you indicated that if this bill passes, it would apply the Landlord and Tenant Act to more tenancy situations. How long does it take under the Landlord and Tenant Act, on average, to evict a tenant who is extremely unruly, who potentially represents a risk or a threat to some of the other tenants in the building?

Ms McDermott: I think it depends on your skill at gathering evidence and using the procedures of the court to do it.

Mr Arnott: But if you're advising someone, how long on average?

Ms McDermott: I don't advise landlords, but you could probably be in court, I would think, within a couple of weeks and you could have a writ that's effective that day. You can then have the sheriff come and serve a notice to vacate that day, saying he will be back in seven days to lock the person out.

There certainly are remedies available for a landlord to evict a tenant, but if the circumstances are so severe that there is a real threat to life or health, there are much more immediate and responsive pieces of legislation. There are other authorities such as the police that may be more appropriate in those circumstances, or sometimes having someone taken in for a psychiatric assessment can be appropriate.

The Landlord and Tenant Act is really intended to govern the relationships between landlords and tenants. It's not intended to deal with circumstances where people become really dangerous or threatening. However, it does give landlords appropriate ways to evict really unsuitable tenants.

The Chair: Thank you very much for making this presentation to us today.

CONCERNED CITIZENS FOR
ACCESS AND EQUALITY

Mr Ralph Evans: I am Ralph Evans. On my right is Sharon Lumsden. On my left is Susan Palazzi. Sharon and I are members of Concerned Citizens for Access and Equality and also members of the newly formed tenant action committee at ALPHA, Apartments for Living for Physically Handicapped Association. Susan Palazzi is an adviser from Concerned Citizens.

For your information, Concerned Citizens for Access and Equality is a group of physically disabled adults who actively advocate for freedom and access in all areas of community life. The tenants' committee represents the majority of tenants living in ALPHA. ALPHA offers accessible, geared-to-income housing for adults with physical disabilities. A non-medical attendant care staff is available 24 hours a day, seven days a week.

What we have in common is that we feel that regardless of our support care needs, we should have the same rights and protection that other tenants enjoy, those rights accorded by the Landlord and Tenant Act. As disabled people, we are forced to live in supportive housing because of the degree of support we need. However, as tenants who pay rent we have very little legal protection with regard to our tenancy.

In making this submission, we bring our own diverse backgrounds and experiences as people with physical disabilities. We are pleased to have the opportunity to speak with you today and voice our support for the amendment of certain statutes concerning residential property.

At the outset, we would like to comment that our submission will speak solely to the amendments to the Rent Control Act and the Landlord and Tenant Act. We support changes which contribute to our independence, ensure that we are more informed about such things as the cost and quality of attendant care, and provide us with the protection and security afforded to other tenants.

The Rent Control Act: Our only comment with regard to this act is that we are pleased we will be given information about the cost of the care we receive and, more importantly, we are given the right to request that information from our landlord. We want to know what we are paying for and these amendments will give us the right to know.

The Landlord and Tenant Act: We strongly support the removal of exemptions which relate to support-service living units like ALPHA where care is provided. We express our support for several reasons.

First, the removal of the exemption gives us the protection of the Landlord and Tenant Act, a protection already given to tenants of Ontario Housing or private landlords.

Second, the exemption is discriminatory since it denies us the security and protection other tenants enjoy, and that denial is based solely on the fact that our apartment complex provides support care. Many apartment complexes for the disabled—for example, Cheshire Homes in London and Toronto, Ontario—provide support care and are also governed by the Landlord and Tenant Act.

Third, it is our opinion that the landlord and the care giver should not be one and the same. In other words, in the current situation, whether we have a problem with our tenancy or with our attendant care, we go to the same person or group of persons to voice our concerns. This is neither appropriate nor an efficient or effective avenue to resolve problems. The conflict is obvious, and one should not impact upon the other. Indeed, there should not be a relationship between the two; however, in the past, a relationship has existed.

Fourth, we support a legal structure which clearly outlines such things as reasons for eviction. We will have a legal recourse with regard to eviction, and in our opinion this is long overdue.

Finally, we welcome legislation which dictates tenant and landlord rights and obligations. The exemption leaves too much room for subjectivity with regard to eviction, maintenance and repairs, and other rights and responsibilities.

Before closing, I would like to speak about the impact of our landlord's response to Bill 120. Why ALPHA would be so vehemently opposed to Bill 120 is not easily understood. In a letter dated December 1, 1993, the ALPHA board of directors informed all tenants that their attendant care services will be terminated on March 31, 1994. In a radio interview on CBC-1550, Mr Gascoyne, a board member, stated that we will be in rest homes or chronic care homes after March 31, 1994. In an article in the Windsor Star, the same message was given. ALPHA's reason for these decisions? The possible passing of Bill 120.

Our landlord, in opposing Bill 120, is telling us that we do not need protection or security as tenants. This is the same landlord who instructed a tenant that her support care was terminated unless she lost some weight. This is the same landlord who organized a pool party for all staff in August 1993 and left the building in charge of an 18-year-old homemaker with specific instructions not to leave the staff room. This is the same landlord who allowed the building to be without smoke detection, unbeknown to the tenants.

We need and want the protection of the Landlord and Tenant Act. We will accept our responsibilities as tenants as outlined in the act. We want the legal recourse afforded other tenants in Ontario. At this time, instead of the efficiency of summary procedure of the Landlord and Tenant Act, which allows any tenant in Ontario to go before a judge in a short time, we are forced to make a complaint through the Ontario Human Rights Commission, which has a significant backlog and provides an unwieldy procedure.

In closing, we strongly urge the NDP government to enact the amendments to the Landlord and Tenant Act. Many voices have been raised in support of Bill 120. We add our voice in support of this bill and the amendments with regard to the removal of the exemptions.

We appreciate the opportunity to speak with you today and would be happy to answer any questions you may have about this submission.

Mr Crozier: Mr Evans and Ms Lumsden, I want to thank you for attending today and compliment you on having the courage to speak out under the circumstances you have, because I have the context of that radio broadcast you were speaking of, and I just wanted confirmation for everybody to hear because we're going to be hearing from ALPHA later that as part of that broadcast you confirmed that the residents received a letter from ALPHA that if this bill goes through, you guys are out. Is that essentially what it said?

Mr Evans: That's correct.

Mr Crozier: Could you give us some idea, having been told by your landlord, for which you have no protection right now, how you felt when you received that?

Ms Sharon Lumsden: Some of the tenants in the building have come from chronic care or nursing homes to begin with. They moved into ALPHA as an alternative to independent living. It terrified them; it absolutely terrified them. We had a mess for a while with some of the tenants. I have never been in a nursing home. I don't care to go to one. It upset me. It's unbelievable the terror. You can't describe the feeling that you get of hopelessness: "What am I going to do? Where am I going to live?"

The Chair: Mr Crozier, it's my understanding that this particular issue is subject to a court proceeding at the moment, and under the standing orders discussing a court proceeding or a judicial proceeding of any type is not in order, so perhaps in the interests also of the presenters, you will broaden your line of questioning.

Mr Crozier: In the legal sense then, I will withdraw my question. Is that what you usually say?

The Chair: No, it's there.

Mr Crozier: Just broaden the issue?

The Chair: Just broaden the issue is fine.

Mr Evans: The court case only includes two tenants. That does not involve the whole building. It's only with reference to two tenants.

Mr Crozier: Are you the two tenants?

Mr Evans: No, we are not.

Mr Crozier: I'm referring then to a broadcast in which these two people—

The Chair: I would at this point, just to be helpful, remind members that all members during a committee session obviously have parliamentary immunity that is generally put in place. The same protection is not accorded to presenters, so what you say could be possibly subject to action.

Mr Crozier: No, I don't think it's necessary to go beyond that, frankly. I'll pass.

The Chair: I'm just trying to keep us all out of trouble, that's all.

Mr Crozier: Good.

Mr Arnott: Thanks very much for coming forward. Your presentation's been very compelling.

One of the issues I see in this bill that remains an outstanding concern, I think, as it would affect you, is

that this bill addresses problems relating to tenancy but it doesn't bring in standards of care that I think are needed too. That's not necessarily a flaw of the bill, but it's an inadequacy in terms of the government's policy, especially the Lightman report, which gave us all cause to pause and recognize that there has to be regulation of standards of care as well. Would you agree with that?

Ms Lumsden: Yes. There definitely has to be a standard of care. As tenants in ALPHA, we're willing to work with somebody, to work with people. We don't want to be told any more how our care is going to be delivered. We want to be in on the decision-making. We're not unreasonable people. We don't make unreasonable demands on any care giver. We just want our rights, as everybody else, to make the decision how our care is going to be received and how it's going to be done. There's definitely a lot more room for improvement in there.

Mr David Johnson: I think Mr Arnott has led into it quite nicely. There's a bit of a general concern, and maybe I'm playing devil's advocate a little bit here. I think what you bring forward is very valid and needs to be addressed. The Lightman report certainly pointed that out. There have been abuses in, shall I call them, care homes in general, no question about it.

The point has been made though that while these need to be addressed and something needs to be done, if the regulations are too strict, the pendulum swings too far the other way. One of the swings of the pendulum that has been brought up before is that you've suggested for example that the care be separated from the accommodation side. I think some concern has been addressed by that, but if the pendulum swings too far, this will be a great disincentive for private operators. The private operators, probably those in business right now, will carry on, but it will be a disincentive for any new operators to come in.

I wonder if you agree with that, and if you do, is that a concern, or do you have a different view in the long range? How do you see this kind of care being given?

Mr Evans: The only thing I can comment on that is that the way the situation is now, it does no good for us as tenants in an apartment complex where the landlord also provides the support care. In the situation we have, we have no input into either. The removal of the exemption under the Landlord and Tenant Act and the introduction of the information that we can get from the Rent Control Act, which came into force when the bill was first read, gives us at least a little step in the right direction. It's hard to explain, but we would rather not live under what we have now, and this, as I say, is maybe a small step to giving us some kind of dignity and respect that we would like as tenants.

Mr David Johnson: What I'm asking beyond that is, do you see a role for the private operator in terms of care homes in the long run?

Ms Lumsden: I think there is. I think it's extreme that the landlords or the private owners think we're going to run them over or beat them or whatever. I think somebody who was presenting here just before us said it: There are other avenues in the community. If there is a

tenant who is causing a problem, you can take care of it.

Mr David Johnson: I think we'd all agree that there certainly are a number of excellent private operators as well. In my view at any rate, we wouldn't want to discourage the excellent operators; it's just the few bad apples.

Ms Lumsden: I think if you're an excellent operator, you won't have a problem with the tenants. It's like any landlord or tenant in any building, whether you're disabled or not. If you're a good landlord, your tenants are not going to have any problems. If you have a tenant in an apartment who's acting up, you know how to get rid of him. It's the same rights as we want.

Mr Lessard: I just wanted to say thank you very much for your presentation. I know sometimes it can be intimidating to appear before a group from the Ontario Legislature, but it is important for us to hear from tenants and people who will be affected by the legislation. I want to wish you luck in the challenges that you're facing at ALPHA. Thank you once again.

Mr Gary Wilson (Kingston and The Islands): Thank you very much for your presentation. It's set out so clearly. It covers all the aspects and certainly gives us things to consider when we come to the clause-by-clause.

I'd like to ask you one thing about ALPHA; that is, I understand it's a non-profit organization. You might be aware that the Ministry of Housing is proposing that the boards of non-profit housing include tenants on the board, up to a third. I'm just wondering what you think that will do for non-profit housing like ALPHA.

Mr Evans: I think it would be good for the tenants to have at least input into any areas of their concern within the building. When we formed the tenant action committee, we submitted a letter to the board of directors requesting that we have seats on the board and that matter's been deferred. So right now we have no answer at all.

1050

Mr Gary Wilson: I see. How long ago was that, that you made that proposal?

Mr Evans: We formed on January 7, so it's been almost a month. We attended their last meeting. At that time, they deferred it.

Mr Gary Wilson: What are some of the issues that you expect would be raised by tenants that aren't being looked at now?

Ms Lumsden: Issues that would be raised by tenants are more control of our support care; who's going to do the hiring and firing; how it's going to be delivered; how the building's maintained, the maintenance of the building. I think regular things that would be in a landlord and tenant building, essentially one that provides support care. I think our biggest issue is the support care issue.

Mr Owens: This is one of the things that has intrigued me I guess in a generic sense. We've gone through the hearings with respect to the provision of care in residences and the impression that I'm getting from deputants is that you're essentially subject to the type and kind of care that the operator would like to provide for you, that consent is perhaps not a big issue on the agenda

in terms of the type or time of delivery of the care.

I'm wondering, in a situation like yours—I've been involved in a review of the Co-operative Corporations Act—if you were looking at the provision of your own care as a residents group and forming a not-for-profit care cooperative, would that be something that you would find interesting in terms of meeting your needs in a resident-driven way?

Ms Lumsden: I think so, anywhere we can have some control, some say, yes. The building itself, having a place to live is fine. We would like that, but then when you have to have the aspect of care, that's where we're coming from, is the care.

Mr Owens: Yes. This is not an institution.

Ms Lumsden: No.

Mr Owens: Exactly; this is your home.

Ms Lumsden: This is our home, this apartment building where we pay rent.

Mr Owens: And just like if I wanted to have somebody into my home to do something, I should be able to choose who it is and what it is that they do when they're there. But it's my sense, again from a number of deputants, that kind of consent, and choice particularly, is simply not available to people. For people who are vulnerable, it's problematic because what do you do? You need the person, you need some level of care.

Ms Lumsden: Yes. You're subject to policies of the building and one day to the next, they can change. You didn't know there was a policy until you broke it.

Mr Owens: And what happens when you break that policy?

Ms Lumsden: Oh, you get told about it. It's the situation, you're wrong and they're right.

Mr Owens: So they send you the memorandum like you're in school.

Ms Lumsden: It's like being a child and a parent. You're the child.

Mr Owens: And that's not the dignity that you spoke about earlier.

Mr Gary Wilson: Just to follow up about this part, to maybe ask you to elaborate a bit or confirm just what you meant when you said that the landlord and care giver shouldn't be the same. I think you mentioned that in your presentation. You would be in support of the support that we give through the rent control just applying to the accommodation portion of the payment?

Mr Evans: Yes.

Mr Gary Wilson: Those are all the questions I have.

The Chair: Thank you very much for taking the time to come down and see us this morning. I hope the weather holds and everyone can get home.

CITIZEN ADVOCACY WINDSOR/ESSEX

The Vice-Chair (Mr Hans Daigeler): The next presentation is the Citizen Advocacy Windsor/Essex. You have 30 minutes and if you'd leave some time for questions and answers, it would be appreciated. Introduce yourselves for Hansard records and for the committee.

Mrs Shirley Jarcaig: My name is Shirley Jarcaig.

I'm the managing director of Citizen Advocacy Windsor/Essex. This is Nola Millin, the president of our organization. We're very glad to be here today.

Citizen Advocacy Windsor/Essex is pleased to lend our support to the passage of Bill 120 regarding the expansion of residents' rights to include those who are residing in unregulated housing under the Landlord and Tenant Act. This bill will enable those individuals to register their concerns and take responsibility for the conditions under which they live. We feel that this is a healthy step in reducing the possibility of abuse in such facilities and giving the residents the opportunity to exercise rights that could give them a better quality of life.

Our organization, which is entering its 20th year in providing community-based advocacy for vulnerable adults, has shared in the trials and tribulations of people living in unregulated housing. Some members of our board of directors, as well as people matched on a one-to-one basis in our program, live in these facilities.

Until the recommendations made in the Lightman report, and the introduction of this bill, there was nothing that recognized the rights of these individuals in determining their own quality of life. Many of these people, due to disability and lack of support systems, do not have other choices in living accommodation and over the years have had to tolerate and adjust to conditions of living that did not take into account their individual needs. Policies in these facilities tend to be determined and based on the interests of their operators rather than their residents, with little explanation for cause or reason and no opportunity for redress.

Let us give you examples of such situations that, depending on the sensitivity of the rest home, group home or limited care facility management, give opportunity for abuse and lack of quality of life.

A woman in her 30s had been living in a rest home for a number of years. She was a psychiatric patient and mildly developmentally handicapped. She lacked the skills to be able to live independently and did not have the family to provide her with a home. She was relatively happy at the rest home where she lived in the downtown area and was within walking distance of a recreational and treatment program for psychiatric patients which she attended. Most of her relationships and activities centred around this treatment program, which was very important to her.

The rest home that she lived in was one of three owned by the same private company with a common director. Over a period of time, the director noted that one of his homes had a number of vacancies and that all of the residents were male. He decided that he would move two of his female residents from his downtown rest home to this other rest home on the east end of the city to fill the vacancies and lend more balance in variety of tenants.

One of the women chosen was the one for which we speak. No one was consulted about the move and it was done quickly, with little attention or preparation for the possible changes it would make in the lives of these women.

Her new residence was a considerable distance from this woman's recreational and treatment program. She needed to take the bus to get to her program. The makeup of the people at the rest home was such that she did not have any opportunities for relationships. When the bus system went on strike after the move, this woman could no longer access her only recreational and social outlet. No attempt was made to find her alternative forms of transportation and the woman's emotional condition deteriorated considerably over the next weeks and months. She indicated that she was very unhappy with her living situation, but nothing was done.

1100

Under this new bill, all rest home residents would be informed of their rights to question such moves. There would be the protection of a residents' council to address grievances, and rest home and group home operators could not take such licence.

Another area of abuse, with which this part of the province is quite familiar, is the financial licence taken with comfort allowances. It has not been uncommon for members of my organization and staff to find that an individual living in a residence for a number of months has never been told that there are monthly funds available for personal use. People in need of toiletries, shoes, clothing and transportation costs have gone without, while the \$100 a month given to them for such amenities has gone into the coffers of the rest home operator.

Services that could be accessed for hearing aids, glasses, dentures, and which many care providers are aware of, are never mentioned. We have visited people who have lost dentures and been put on soft diets rather than referred to a denturist or a dentist for another set of teeth. Many of these people would need assistance in accessing these services, but such services are never contacted or mentioned to the residents involved.

Much education will be required to inform people of their rights and how to protect them. Often it is the lack of knowledge of one's rights that prevents people from exercising them.

We have a local facility, ALPHA, that is supposed to be an independent apartment living program for physically disabled adults. All of the residents living in the building require 24-hour attendant care for their physical needs. ALPHA sets policies for its tenants without any consultation, explanation or process for appeal. The justification for lack of tenant involvement is that the facility is both the landlord and the service provider.

This law would empower the tenants to speak on their own behalf. By separating service provision from landlordship, tenants could no longer be prevented from participating in the policy-making process for the building in which they live. Dialogue and communication would be required between the landlord and the tenant, preventing miscommunication and preventing the fear and resentment that has, until now, been so prevalent in this facility. The residents of this facility are adults and wish to be treated as such.

We would like to thank the committee for the opportunity to speak on this matter which will affect the lives

of so many people in the province. Windsor has the largest number of rest homes per capita in the province and some of the largest in size as well. We are glad that you have chosen to visit this city so that the residents concerned with these matters have the opportunity to give their points of view. We look forward to what we hope will be quick passage of this bill and the challenges that lie ahead in ensuring that the rights of residents are protected, respected and exercised.

Mr Arnott: On page 2, you make reference to the fact that you know of cases where the comfort allowance that is extended to people in some of these residential placements is not getting into their hands and it's being stopped. Will this bill, if it's passed, prevent that from happening in the future?

Mrs Jarcaig: I think what needs to be done is that if you have, for instance, a tenants' association, if you have mechanisms in place where people are informed of what to expect when they go to live in such residences, this will prevent a lot of the lack of knowledge of these things.

I remember, it must have been a couple of years ago, going to visit a woman who was blind, in her 80s and who had recently gone to live in a rest home. She had lived there for six or seven months and had absolutely no knowledge of the fact that she was entitled to a comfort allowance. When I went to the operator of the facility and told them that she had no knowledge of it, they said: "We didn't know that we had the obligation to let her know these things. Her money is there for her, but we never bothered to tell her."

I think part of it is, if you have a mechanism in place that will inform people once they go to live in such places that, "Yes, even though you are on a pension, the government will be giving you x number of dollars every month to cover certain personal costs, and this is money the rest home is obligated to keep on your behalf," then that person knows that there is x number of dollars available to them, and if they need a pair of shoes, they can go out and get that pair of shoes; if they need toiletries, they can out and get toiletries.

To see the kinds of situations where people are literally left without anything and nobody has ever bothered to inform them and the money just mounts in the bank is—

Mr Arnott: It's wrong.

Mrs Jarcaig: It's really, really wrong.

Mr Arnott: I'm just wondering if this bill will in fact redress that problem, because certainly it is a major problem if money that people are entitled to they're not getting because someone else is skimming it off.

Mrs Jarcaig: That's true. I think if there are tenants associations in place, if we here locally are able to maybe—certainly people will need to be informed of their rights in these rest homes, particularly since they haven't had them up until now, and there will need to be some kind of educational program put in place so that people are aware that these things are available to them. That's what we're hoping for, really.

Mr Owens: I'd like to pursue this issue with respect to residents not receiving their comfort allowance. What

kinds of things could you recommend to the government that we could do around education? Posting a residents' bill of rights, some kind of enforceable duty on the operator to ensure that people get their money, some kind of spot-check audit?

Mrs Jarcaig: I think any of those things would be wonderful. I know of legal cases here locally and we have at least some bylaws here in the city that obligate rest home operators to keep track of their moneys. That's one of the ways that later on we have found out that people have never received their comfort allowances, sometimes for a period of years. At least the operator was able to be prosecuted for having done such offences. I know that there are legal precedents here in Windsor where they were able to prove what happened to the money, but that's not true throughout the province.

I think those kinds of obligations are necessary. If you're a landlord, you have certain obligations with regard to your tenants.

Mr Owens: Absolutely. Are you familiar with the term garbage-bag evictions?

Mrs Jarcaig: Garbage-bag evictions, where people are just sort of thrown out on the street at the last minute.

Mr Owens: And their belongings in the green garbage bag. Has that been a problem here in Windsor, to your knowledge, people summarily being evicted from either care homes or accessory apartments?

Mrs Jarcaig: I think those things have happened. Within our own organization we have not always been informed about such situations, but I believe that they do happen.

Mr Owens: We were in Ottawa a couple of days ago and we've had folks come in from Sudbury to testify. The opponents of this particular legislation, whether it's the issue with respect to care homes or accessory apartments particularly, have said that this is a Toronto problem and we're imposing Toronto solutions. Nola is saying no, it's not.

Mrs Jarcaig: Nola, by the way, is also a tenant at ALPHA, so she's had some personal experience around the kinds of issues of living in a facility where she doesn't have any rights.

Mr Owens: So this is not just a problem that's restricted to Toronto and we're not just simply imposing Toronto solutions on Toronto-centred problems. So your organization, taking a look at some of the recommendations you've made, particularly with respect to the comfort allowance, would see this as being helpful, particularly to vulnerable persons.

Mrs Jarcaig: Definitely. Right now, if you live in a group home or in a rest home, any kind of policy can be set without your knowledge. They can do whatever, basically, they choose to. They can make you live in a room with somebody you hate. They can move you from one rest home to another or one group home to another and they're not obligated to even tell you why.

1110

Mr Owens: Do you see other government pieces of legislation and reviews, like the Advocacy Act, the Substitute Decisions Act, the Consent to Treatment Act,

the long-term care reform, dovetailing to make whole cloth with respect to, especially, vulnerable persons?

Mrs Jarcaig: Yes. I think this is all part and parcel of the province really looking at the fact that people with disabilities are entitled to choice, just like everyone else.

The majority of people living in these types of facilities are the frail elderly and the disabled. You go into any unregulated setting, and it is usually made up of people who can no longer manage to live on their own. That's why they're there. They're not there out of choice as much as out of necessity. Nobody goes into institutional care because they just love the idea of living in an institution. They go into those places because they no longer can manage to live on their own.

Mr Gary Wilson: Thank you very much for your submission. It does offer a lot of insight into what it is we're trying to achieve here.

You mentioned that Windsor has the highest per capita number of care homes. There are, as we've heard in these submissions and during the hearings, good operators and bad operators. What is your perception of what distinguishes them? What is it that determines a good operator? In your experience, what creates the difference?

Mrs Jarcaig: You will find certain care operators who really have a sensitivity to the people who are living in their facility, who really have some genuine concern. Certainly those people need to comply with the rules of being able to live with other individuals, but they will take into account the person's level of ability and will understand the fact that maybe these people are very dependent on the facility for quality of life. I've met some excellent rest home operators who really are very sensitive, who will go out of their way for the people living in the facilities that they live in. But there are many also where that's definitely not the case. Other things take precedence for them.

Mr Gary Wilson: You do mention the issue of miscommunication, so it could be possible that the operator assumes they're doing the best thing, what they see as being in the best interests of their client. But of course the client might look at it differently. Is this what you meant by miscommunication?

Mrs Jarcaig: I think a lot of the time certain policies are established and people aren't told why. It's never made clear; it's just done. Now, maybe the operator has a very good reason for changing that policy, but if he never shares that information with the people living in the facility, there's bound to be some bitterness and resentment over the fact that they weren't even told why. They weren't even given a reason for changes.

I think anybody wants to know. You can accept change if you know there's a very just cause for that change. But if you're never even told why, if you're never given any options, if you're never consulted about changes that directly affect your life, you feel that you have absolutely no control. The question is, must the landlord have complete and total control over these things? Most people are reasonable and will accept change if they have to.

Mr Gary Wilson: Especially when part of the reason for bringing these changes about is to standardize or to

give the rights to tenants in care homes that tenants in other places enjoy. I think our society recognizes that this is the way people want to live, in effect that they should have these rights. I would think that it would actually improve the lives of both the tenants and the operators.

Mrs Jarcaig: We have a lot of contact with organizations that operate groups home settings, such as the associations for community living here locally and the Canadian Mental Health Association. This will definitely affect them and cause them some adjustment and maybe some problems in complying with the act, but they're very supportive of the fact that yes, this is probably what's in the very best interests of the people in the facilities in which these people live. So they're willing to do it very, very openly.

So then the question is, if these people can recognize that this is in the best interests of those individuals, why can't other facilities? I think it will definitely make a difference and it will mean that these people will have to learn to maybe take responsibility for certain things that they didn't have to before.

Mr Gary Wilson: Who do you mean by "they"?

Mrs Jarcaig: The tenants themselves will have to take responsibility for some of the things that will happen in their own lives as a result of this, but as adults and as citizens in this society we all have to take responsibility.

Mr Owens: A small question, but it perhaps requires a larger answer: In terms of, again, the kinds of things the government would have to look at doing because of the broader application of the Landlord and Tenant Act and covering those who are not verbal in communication, what would you see the government needing to do to assist those tenants who would want to take advantage of their rights under the Landlord and Tenant Act? What kinds of advocacy, aids, would you see the government needing to provide to ensure that particularly a person who is non-verbal would have his or her rights first of all ascertained, understood and advocated on?

Mrs Jarcaig: Do you want to answer that, Nola? Nola is non-verbal.

Ms Nola Millin: Wouldn't that be a part of an advocate's responsibility?

Mrs Jarcaig: Part of what the Advocacy Act is about is ensuring that people's rights are protected when they can't speak on their own behalf.

Mr Owens: In terms of how I understand the Advocacy Act works, an advocate has a limited avenue for becoming involved with a client and in terms of the issues upon which an advocate can become involved, so I guess what I would be looking for, in terms of whether it's the Ministry of Housing or the Ministry of Citizenship through the Advocacy Commission or the Ministry of the Attorney General through the community legal clinics, to provide some level of representation to deal with the broader rights available to focus on the disabled community.

Mrs Jarcaig: I know organizations like ours will definitely be involved. We always have been, in making people aware of their rights. It was just that up until now, many people in these kinds of care facilities really didn't

have any rights, so there wasn't any way of addressing these kinds of issues.

Mr Owens: Absolutely.

Mrs Jarcaig: By giving them these kinds of rights, it will certainly give organizations like ours and the Advocacy Commission a lot more opportunity to make sure that people's rights are protected.

Mr Owens: That's right.

Mr Crozier: I just want to point out again as I did earlier, and perhaps you weren't here, that sometimes the problem with an omnibus bill such as this is that it throws together totally different initiatives. I'm concerned, and I hope this doesn't happen here, that then we end up with something in both cases that really doesn't satisfy the need, that while it addresses some of the needs, it maybe isn't specific enough.

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I just wonder, and perhaps it's following my colleague's question there, if there aren't some things that this bill doesn't cover, and I'm separating the question of regular apartments and basement apartments and granny flats, which are totally different from what you're getting at. Do you feel that this bill does cover the needs that you and others have spoken of this morning? The Concerned Citizens for Access and Equality were somewhat the same.

Mrs Jarcaig: Certainly, it's a step in the right direction, and I think until the legislation is passed and until we see what the effects of it are, we'll never really know if more changes need to be made in the legislation. I think that's true for just about any bill that's ever passed. You don't know what the ramifications are until the legislation is implemented.

Mr Crozier: But you feel it's a first step and a good step.

Mrs Jarcaig: Definitely.

Mr Daigeler: Mine is perhaps more a comment and not so much a question. I hope I'm not too critical towards the Windsor area, but frankly, I come from the Ottawa area. I represent Nepean and I've been a member now for, it's getting on to seven years. Frankly, I find it hard to believe that what you're describing here actually exists. I must say that in my area that I represent there are always difficulties and I think that happens in life, but it's the first time that I hear of what seem to be such serious abuses of the system. I'm just wondering what is going on here in Windsor.

I'm not sure, frankly, whether the problems that you're describing and that were described earlier can be settled by laws. I'm just wondering whether there's a problem that is deeper or different that cannot be solved by laws but that there's something else that perhaps needs to be fixed, and I don't know what it is. Certainly, the situations that you're describing I must say I just have not heard of in my area and I'm just wondering whether you'd want to comment on that.

Mrs Jarcaig: Maybe you should contact the citizen advocacy program in Ottawa and see if it's encountering the same kind of situations that we are.

Mr Daigeler: I spoke to them last Sunday. They're very well organized and they have an excellent advocacy group. I know the people who are involved in it.

Mrs Jarcaig: So do I.

Mr Daigeler: There are a lot of volunteers who are involved and I've not heard any of these kinds of stories.

Mrs Jarcaig: I've been the director of citizen advocacy here in Windsor for the last seven years and this is an ongoing concern for us, all the time. I can't believe that this only happens in this area of the province and I think Lightman's report certainly confirms that.

Mr George Mammoliti (Yorkview): It happens everywhere.

Mr Daigeler: I didn't say that it necessarily is the only area; it's just I'm saying that from my experience it's not been brought to my attention. Perhaps it does exist, but I tell you that I have been in touch and I'm in constant contact and frankly, if there were such problems, I'm sure they would contact my office or my colleague's office. I should say that of course we too have, in my area, very excellent organizations and people seem to know their rights and they're using them. But in any case, I'm just saying that I'm really struck by what you're saying and I find it hard to believe that it is as bad as you're describing it.

Mrs Jarcaig: It is.

The Chair: Thank you for coming.

APARTMENTS FOR LIVING FOR THE PHYSICALLY HANDICAPPED ASSOCIATION

Mr Charles Gascoyne: My name's Charles Gascoyne. I'm a board member at ALPHA, an organization that you apparently have heard a lot about. With me is Pat Clancy, the president of ALPHA, and Lynn Fitzsimmons, who is the vice-president of ALPHA.

In order to fully appreciate our submissions, I think it's important that you actually understand what ALPHA is. By way of background, in the 1970s a committee of concerned citizens was formed to investigate the need for suitable housing for young adults who are physically disabled. The investigations quickly showed that there were very little alternatives for the disabled other than to live at home, in chronic care or in a nursing home. It was in that atmosphere that ALPHA was created in 1978 as one of the four original government demonstration projects relative to supportive housing.

The tenants themselves at ALPHA, in terms of rent, are rent-geared-to-income and must be rent-geared-to-income under the program policies. The apartment building itself consists of 24 units made up of two two-bedroom units, nine one-bedroom units and 11 what are known as "pod" units, and these are bedroom-sitting areas where the tenants share a common kitchen and living area as well as a wheel-in shower.

At the present time, ALPHA's entered into an agreement with the Ministry of Community and Social Services to provide attendant care to the tenants at ALPHA on a 24-hour basis. It's the only 24-hour attendant care program in the city of Windsor, in the county of Essex.

The program agreement we've entered into with the

ministry requires that, first of all, the individual be a tenant at ALPHA and, second of all, that all support care occur at ALPHA. It also requires that in order to qualify for the program, the tenant must require assistance in at least three primary activities of daily living, which would include transfers to and from a wheelchair, the toilet, bed or chair; it could be meal preparation; it could be feeding; it could be bowel and bladder care including rectal suppositories or condom catheters; personal hygiene and grooming; dressing; and, in addition, if there's sufficient funding, assistance may also be provided in a number of secondary routines which would include housekeeping, laundry, banking, communication and shopping.

Initially, when ALPHA was formed, the funding mechanism was to ensure that there was a resident mix of one third light care, one third medium care and one third heavy care. As the years progressed, other alternatives in the community were made available to the low-care tenant and the resident mix has since then altered to essentially one half moderate care to one half heavy care.

The care that is being provided by ALPHA is very similar to what you might find in a nursing home. The major difference is that we are serving the young disabled population, who have different needs and aspirations.

Certainly the direction of long-term care and the focus on supportive housing is welcome and we certainly support it. I think there's been a lot of misconception as to exactly what ALPHA's position has been on Bill 120 and the rights of tenants residing at ALPHA. We, as a board, actually support tenant rights and we made a submission to Dr Lightman, a fairly lengthy submission, where we advocated, on behalf of the tenants at ALPHA, increased protection.

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In about 1987, the legislation was changed to recognize that care homes exhibited certain characteristics which made it inappropriate to deal with them solely as residential premises. We recognize that these apartments are the homes of the tenants and we attempt to abide by that; however, we are operating under a government program. Our concern with the legislation is not the security-of-tenure aspect per se. We have no problem in granting tenants security of tenure; the problem we have is not recognizing the unique aspects of care homes and these government programs.

In order for supportive housing to be cost-effective, there has to be a centralization of those care units. Whether it is in a delinked setting where the care is being provided by another provider and the tenants will then rent from a landlord, it's still going to be in a centralized setting. You need the on-care emergency response system; you need the staff onsite to provide the 24-hour care. The attendant care program was designed specifically for that, for those individuals who could not have their needs met in the regular attendant care program such as outreach which are limited to the hours of 6 am to 12 pm.

Our concern is that certainly there has to be increased protection to tenants, but it has to be taken into account that this is a government program and there is going to be centralization. There are only so many dollars to go

about. In order for the program to be effective and cost-effective, there has to be some consideration of this unique program.

What we're suggesting is that there be recognition of the attendant care program, similar to public housing, such that if you no longer meet the criteria for the supportive housing program, that would be a ground for eviction.

Referring to Dr Lightman's report, he made it very clear that the separation of housing and the delivery of support services has been identified as a central tenet of his inquiry. He went on to say that one consequence of delinking is that housing could become more generic, with operators of care-providing homes becoming more like traditional landlords. Dr Lightman recognized that we're not traditional landlords. Traditional landlords are solely involved in providing a shelter. We have to go much further than that; if you don't have the attendant care, the shelter is meaningless.

This legislation does nothing to promote a delinking of the attendant care from the shelter component of the package; in fact, it tends to inhibit a delinking, and I'm thinking specifically of the provisions dealing with the Rental Housing Protection Act. It makes it very clear that care homes cannot even convert to a regular residential apartment building without going through a costly municipal approval process and the results cannot be guaranteed. That, to me, encourages a linking of the care to the housing and is not in accordance with the government's policy on a delinking of the care from the housing.

The problem is, we're not able to provide a full delinking. If we had individual funding—and certainly I'd like to see that someday and I understand there is the pilot project going on—we wouldn't need places like ALPHA because the service would be portable. We don't have it; there has to be some recognition that you have only so many units. Dr Lightman recognizes you can't force somebody to receive care from a particular individual and we wouldn't necessarily support that. We're not the answer to everybody and we recognize that. The problem is, you have only so many units, so if you have an individual who does not want to receive care from a particular service provider, what alternatives are there? There aren't any.

Providing security of tenure without providing the corollary of ensuring that they can receive the care so they can really have a true security of tenure is meaningless. We recognize that at the present time we haven't reached that point, particularly in this era of budgetary restraint, so there has to be some consideration, as I say, to the fact that there are so many units. You could also have a situation where somebody's not participating in a program. The supportive housing program will still be unit-designated. We've lost that unit and we may end up with another individual in chronic care or nursing home, improperly placed, because they can't access the units that they should be accessing. So that's one of the major concerns of ALPHA as an organization.

The other concern is that the legislation itself ignores the care aspect totally. It doesn't do you any good to

have security of tenure if it doesn't deal with situations of tenant abuse, situations of care giver abuse. It goes both ways. Certainly the care givers of Ontario are very well aware of abuse of themselves as well as the tenant abuse, and that is not recognized in this legislation whatsoever. So what we've now given these tenants is the security to live in an abusive situation, because we haven't offered the alternatives.

There has to be some consideration to controlling care, creating standards of care, staff competence. These are all things that ALPHA as an organization advocated in front of Dr Lightman in his inquiry. We called for mandatory provisions in contracts, mandatory staff competence, considerations of levels of care. We're concerned with medication and the liability that is associated with it. We're concerned that all these issues are not dealt with under the Landlord and Tenant Act directly, although we can't lose sight of the fact that, as a residential tenant, the courts have consistently, and particularly with the advent of rent control, found that it's more than simply a shelter. It includes a number of services and facilities, and that's the language that the Rent Control Act uses: "services and facilities."

So we now have a situation where the legislation says we can't change services and facilities. We can't alter care to meet changing needs because we need a tenant's consent, which may not be forthcoming. We may then be forcing a landlord to continue to provide care in a dangerous situation both to the tenant and the care giver. How do you deal with it? That's not addressed in the legislation. These are concerns of our board and these are concerns that we have been raising all along.

In what situations can you withdraw care? Security of tenure is no good if the landlord can withdraw care at anything, nor is it appropriate. We at ALPHA have a policy on the withdrawal of care. It's been provided to all the tenants. We'd like to see some guidance in that. We've not been provided any guidance in that. Is the withdrawal of care constructive eviction of these tenants? Do we have to provide care in an unsafe condition? What about medical assessments or physiotherapy assessments or whatever assessments you need to assist somebody in care?

We have a situation right now where we're concerned that we're providing somebody, unsafely, assistance in feeding. We've asked for medical assessments, and that's been going back since April of last year. We've not received it, yet we're being forced to continue to provide care, potentially putting that individual at risk. It creates horrendous considerations from a liability point of view for the landlord, and that needs to be addressed.

What about confidentiality of medical records? Care homes are going to definitely have medical records, or should have medical records. That's not been addressed here. So we have those concerns.

I'd like to address some of the comments that have been made by previous presenters as I was listening, because I think there's a misconception about what's going on in Windsor.

At ALPHA, we do not have tenants on the board, and that's something we have been struggling with. You

heard there was a request recently to put two tenants on the board. That was actually dealt with last Tuesday when we had our first board meeting, and it was deferred one month because we're not sure what's happening in ALPHA with this legislation.

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Contrary to what Mr Crozier may have heard, there has been no letter that went out to any of the tenants that says ALPHA is closing down. That letter, or a similar letter, was read into the record of Hansard during Mrs Marland's debate on Bill 120 at first reading. What it said is that the attendant care program is being closed because of our concerns over our inability to carry on the attendant care program under Bill 120. It wasn't an easy decision that the ALPHA board of directors had to make.

Prior to taking that decision, it met with the local long-term care office to attempt to receive assurances that our tenants would receive the continued 24-hour care. The long-term care office has not given us that assurance. They have not given the tenants that assurance. What they have given them is the assurance that they will continue to receive care. We don't know that it's on a 24-hour basis or simply between 6 and 12. That's a concern of ours.

Our concern was that we give those tenants sufficient time to order their lives to do this, and Bill 120, that's delinking, but the building is staying open. If the CBC had properly reported an interview I gave, they would have seen that. Certainly we've heard about litigation, and I'm not going to get into it, but those tenants who have a lawyer were advised specifically that the building was staying open.

What we did do, however, to address those concerns about tenant participation is we've opened up to the tenants a number of avenues. It goes to consumer empowerment. We have an ALPHA advisory committee consisting of staff and tenants only. That advisory committee is free to meet, to make recommendations to the administrator, and if the administrator does not accept those recommendations, then it goes to the board. We have an attendant care committee in which the president and vice-president of the tenants' association are members. That's a board committee to deal with the attendant care issues. We've always encouraged a tenants' association. Unfortunately, it's never been one that has been able to maintain itself. Lastly, we've opened up our board meetings for a public portion and allowed the tenants to make presentations directly to the board. So we've made those attempts.

Unfortunately, they don't seem to be working, and we certainly welcome the Advocacy Act. That was something that we at ALPHA, before long-term care had actually taken the form it has now, just as it was forming, actually requested funding for, a tenant advocate. We requested it continually and were turned down by the local long-term care office. So certainly we recognize the need for tenant empowerment. We have a problem, though, with tenants on the board. It's been dealt with, we've agonized over it, and we've heard from tenants who want to be on the board and we've heard from tenants that don't want tenants on the board. They don't want them to know

about their very personal care needs. So that's a concern.

We've heard submissions from tenants' advocacy, and it's not my role to slam anybody, but again you have to take it in perspective. We as a board have asked Citizen Advocacy—we know that there's some dissension at ALPHA. We don't know what the problem is. Citizen Advocacy Windsor/Essex has been actively involved in it. We've asked to meet with their board in the absence of their administrator and our administrator and we have been consistently turned down on those requests.

These issues have to be dealt with, but this legislation doesn't. We have to keep in mind that care givers are providing very personal care and there is a power imbalance there. That has to be addressed, we recognize that, but the Landlord and Tenant Act is not the appropriate mechanism to deal with it, nor has Bill 120 dealt with it, notwithstanding some very serious concerns raised by Dr Lightman.

Unfortunately, until we get into an era where we can have fully funded individual care, there has to be a program like ALPHA. There are limited government funds, and that has to be recognized.

Mr Mammoliti: Did you or any of your staff or anybody who works at ALPHA ever threaten to evict somebody because of their size or weight?

Mr Gascoyne: No. In fact, I investigated that. That was reported by the CBC as a statement of fact. What happened was that the individual became too heavy for us to lift. We have one lifting device; the ministry does not fund for those. It was unsafe to use the lifting device, thereby putting that staff member and that tenant at risk. We, on notice to that tenant, withdrew that portion of the care only. There was no threat of eviction; there was no eviction. That individually voluntarily, as I understand, admitted herself to hospital, was there a significant period and, when her weight came down, was brought back to ALPHA and continues to reside there. That's a care issue.

Mr Mammoliti: Do you think that's fair to that individual?

The Chair: I would remind members that it is out of order, according to the standing orders, to discuss or ask questions about matters that are or may be before the courts.

Mr Mammoliti: Is this matter before the courts?

Mr Gascoyne: It's never been before the courts.

The Chair: The Chair is not knowledgeable about the exact circumstances. I'm just trying to be helpful.

Mr Gascoyne: That's one of our points.

Mr Mammoliti: Do you think that's fair, to bring up a relationship with the Ministry of Health in a case like this? Do you think it's fair to threaten anybody with eviction because of their size and not work with the Ministry of Health to try to rectify the problems that might exist in terms of lifting that person?

Mr Gascoyne: I think you assume that we didn't try to work with the Ministry of Health, that there was a threat. There wasn't a threat. We did attempt to work with the Ministry of Health. There was no solution. That is what we're asking for. We have asked for guidance on

the withdrawal of care issues. If you took the time to read our submission to Dr Lightman, you would see that what we're advocating is that it be in conjunction with the consumer; that this is not something that will be imposed upon the consumer but that these issues be dealt with representations from care givers, from consumers and from the ministry.

Mr Mammoliti: If you can't come up with a resolution, you kick out the tenant.

Mr Gascoyne: We didn't say we kicked out the tenant. We withdrew that portion of the care. You also have to recognize that there are safety issues for the staff, and as an employer we can't ignore those.

Mr Mammoliti: You mentioned tenant abuse earlier. Are your staff not trained around tenant abuse?

Mr Gascoyne: Certainly they are.

Mr Mammoliti: And are tenants trained around staff abuse?

Mr Gascoyne: We don't train our tenants. They are independent individuals.

Mr Owens: I don't know if I'm less confused or more confused about your situation than I was before the deputation.

Interjection.

Mr Owens: Those folks over there, no question, are always confused. In terms of the types of care you provide, you say you provide medium to heavy care. What does that entail?

Mr Gascoyne: I've given you the various categories, in terms of levels, in terms of numbers of hours.

Mr Owens: Do you have that there?

Mr Gascoyne: No. I've not provided it because this is confidential information. I've got a list.

Mr Owens: I'm not asking specific case histories. I'm asking, what does medium care constitute and what does heavy care constitute?

Mr Gascoyne: Heavy care: We had one tenant who was receiving up to 49 hours of care a week, as much as eight hours' care a day. Light care: We have people who are receiving as little as three quarters of an hour care a day.

Mr Owens: So we're talking about basic functions: toileting, feeding, that kind of thing, meds, moving from place to place etc?

Mr Gascoyne: Yes.

Mr Owens: Do you have anybody on intravenous or any kind of invasive meds, insulin and stuff like that?

Mr Gascoyne: No. We are not a medical facility. You have to understand that.

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Mr Owens: That's what I'm trying to differentiate. When you talk about medium and heavy care, what does that mean?

Mr Gascoyne: That is a problem that we as a board have as well. We look at the proposed amendments and see that homes for the aged aren't included. They're very light care. They don't necessarily provide medical care, yet they're excluded. I can appreciate that there is a

provision in the Nursing Homes Act that does recognize that that's an individual's home, but again they're excluded. I'm having trouble distinguishing the policy of this government on this.

Mr Owens: In terms of the consent issue, you touched on that gingerly, if I can characterize the way you talked about consent. If a group of your residents decided they wanted to not accept the care that your facility, your home, was providing and wanted to go into the community or, for instance, start their own care group, how would you respond to that?

Mr Gascoyne: We certainly encourage the tenants to deal with it the best they can. We don't provide all their care, necessarily. There is the VON. We don't prevent it, but under our government program—you have to keep in mind that it is a government program that exists—we do require that they receive at least three activities of daily living from—

Mr Owens: Is that with consent?

Mr Gascoyne: They enter into a contract with us that is negotiated between us, between ALPHA and the tenant. That is with their consent.

Mr Daigeler: Perhaps I missed it. What is ALPHA, not what it does but who's behind it?

Mr Gascoyne: The makeup of the board?

Mr Daigeler: Are you a non-profit organization?

Mr Gascoyne: Yes, we're a non-profit organization. The founder of ALPHA was Jack Longman, who himself was disabled. It was created as a citizen group to investigate the problem of supportive housing in the city of Windsor in the 1970s. Since then the ALPHA board, in terms of makeup, has consisted of both disabled and non-disabled. At one point we had a former tenant on the board. Lynn, if she doesn't object to my saying so, is visually impaired. We have people with cerebral palsy on the board. We don't focus on somebody's disability, but at the same time we try to keep in perspective—

Mr Daigeler: I'm trying to get a sense of who's behind it. How do you get your board members? Are you affiliated with a church, or is it just members of the community, that you advertise and they come on the board? Who's behind it? You yourself are what?

Mr Gascoyne: A lawyer.

Mr Daigeler: No, are you the chairman of the board?

Mr Gascoyne: I'm a board member. I'm a past-president of the board. Certainly we look to all kinds of avenues to choose board members. We have an individual who's very active in the disabled community, and we've chosen from a number of disabled groups people in whom we find qualities needed in our organization. We search out people.

Mr Crozier: In your submission you say Bill 120 fails to take into account the unique nature of care homes, and under section (c) say "only in terms of the rights of the consumer." Notwithstanding the funding, does this bill threaten the rights of you as a care giver? And, as was said by another submitter, if this is a first step, can we then look forward to going on to perhaps satisfying other concerns you have?

Mr Gascoyne: I'm sorry, I was trying to find (c); I didn't hear the whole question.

Mr Crozier: Section (c) is the last page of your submission. You start out by saying, "Bill 120 fails to take into account..." and section (c) says "rights and responsibilities of the care giver and the consumer, by speaking only in terms of the rights of the consumer."

First, does it threaten ALPHA's rights? If it does, can it not be considered as a first step and then we'll find out how it threatens and what can be done?

Mr Gascoyne: We certainly believe it threatens our rights. It creates liability problems, and that's the problem. It focuses on the rights of the consumer only, without taking into account that there are corresponding rights and responsibilities.

To give you an example, under the Landlord and Tenant Act there is a responsibility on the landlord to provide clean, safe premises in a good state of repair, and a corresponding right on the tenant to ensure that the premises remain clean. We don't see that here. There's an obligation on us to continue to provide care, but there are no obligations on the tenant concerning that care. There have to be corresponding rights and responsibilities, particularly when you're dealing with very personal care, dealing with people who are employed to provide this very personal care.

That's not a traditional landlord-tenant relationship, and that's why I believe in 1987 there was a recognition—I'm not going to say removal, because I don't believe care homes were ever part of the Landlord and Tenant Act—that care homes are a unique type of facility, a unique type of housing that is something more than simply shelter. If we simply ignore the rights of the care giver, that creates a problem for both the tenant and the landlord.

Mr David Johnson: I'm trying to pin down your concerns and what recommendations you would make to this committee to address those concerns. You've expressed concern that it may require you to give care in unsafe and dangerous conditions. Is this if the Landlord and Tenant Act is applied to your business?

Mr Gascoyne: Yes.

Mr David Johnson: In that case, are you specifically asking to be exempted from the Landlord and Tenant Act?

Mr Gascoyne: Definitely not to be exempted. Our position has always been that we have no objection to the security-of-tenure concepts, but deal with the care problems in it; also, to recognize that we are a specialized program of supportive housing and to ensure that that housing program is done in a cost-effective manner, if you no longer meet the criteria for that housing program, which the government would have control over, that would be a ground for eviction, similar to public housing. We feel there are a lot of problems.

Mr David Johnson: How are you recommending that your concerns be addressed? Are you recommending that the Landlord and Tenant Act be amended to specifically recognize the conditions you feel are unique?

Mr Gascoyne: Not just our unique conditions. In

supportive housing, it doesn't matter whether it's a linked or a delinked service because of the fact that you have to have 24-hour care onsite. We're asking that that be recognized as a ground for eviction, that if you no longer qualify for the program parameters, you can be evicted. There is a provision right now for public housing.

We believe the attendant care program needs serious overhaul so that the program parameters are very clear, so there is no question about whether you do or do not meet the program parameters.

Mr David Johnson: Just so I'm perfectly clear, you are recommending that there be an amendment to the Landlord and Tenant Act that if you don't meet the parameters of the care, that would be grounds for eviction. That's what you recommend.

Mr Gascoyne: Yes.

Mr David Johnson: Is that what you mean by recognition of attendant care programs? Is that the same thing?

Mr Gascoyne: That, and if it's going to be under the Landlord and Tenant Act—I'm not sure it should be, but if it is—there have to be amendments that also deal with the care issues. That relationship is not simply a shelter relationship, it's a care relationship, and that's not dealt with by this legislation. That creates a serious problem because, as I said, it's no good to have the shelter protection if you don't have the care provisions.

Mr David Johnson: You're talking about amendments under the Landlord and Tenant Act again? Is that what you're talking about?

Mr Gascoyne: Certainly part of the problem has always been that there's a hodgepodge of legislation that deals with these issues. For simplicity, if it's going to be under the Landlord and Tenant Act, care issues should be dealt with as well under the Landlord and Tenant Act.

1200

Mr David Johnson: Are you in favour of delinking or opposed to delinking?

Mr Gascoyne: Personally, I'm in favour of delinking because then you wouldn't need programs such as ALPHA. I don't know how we're going to afford it, but it's certainly a worthwhile goal.

Mr David Johnson: Do I hear you properly? In a perfect world, if there were the kinds of resources available that you'd like to see available, that I assume everybody else in this room would like to see available, you would be in favour of delinking, that it would make sense.

Mr Gascoyne: Yes.

Mr David Johnson: But given that we don't have all those resources available—other deputants have referred to that as well—in today's situation are you still in support of delinking?

Mr Gascoyne: Yes, I still am. You have to appreciate that whether you have a delinked service or a linked service, if we're not providing the care there is still going to be that concentration. You need it, because you're not going to have an individual running across the city to provide 24-hour care. It's just not possible, even with a

delinked service. It's going to be concentrated either at an apartment building where it's integrated, where it's better if it is integrated—it's still going to have to be concentrated and there are still only so many units available. Our concerns exist whether it's a linked service or a delinked service. I understand there are concerns over an imbalance in bargaining power when you do have a linked service. I appreciate those concerns and I recognize them, but in terms of our concerns with this legislation, it doesn't matter whether it's a linked service or a delinked service.

Mr David Johnson: Has that imbalance you mention, in your view, manifested itself at ALPHA?

Mr Gascoyne: I don't believe so, quite honestly. Our tenants are far from timid about going to the ministry if they have a concern, far from timid in seeking assistance. At ALPHA, in August of this year, we voluntarily requested a ministerial review of our program, something most programs don't normally ask for; usually people will do anything to avoid ministerial review. We're confident we're providing the service in accordance with our program criteria and have asked for that because we believe we are.

The tenants aren't afraid to go to the ministry and raise concerns, and it's interesting that when a concern is raised, whether it's a stove concern or anything else, it's not Housing they go to, which funds their rental, but the long-term care office.

The Chair: Thank you for appearing today.

CAW COMMUNITY DEVELOPMENT GROUP

The Chair: The final presentation this morning is from CAW Community Development Group. Good afternoon. You're the first group I've been able to say that to.

Mrs Caroline Desjarlais: Good morning. I'm Caroline Desjarlais from CAW community development, operational services. This is Earl Dugal, executive director of the Windsor area.

I would like to thank the committee for taking the time to hear petitions from across our province and also allowing our organization the opportunity to speak on this very important issue. I am here representing the CAW Community Development Group of Windsor and Essex county, which is in favour of this legislation.

CAW Community Development Group is a resource group providing technical as well as organizational assistance for non-profit and cooperative community organizations. CAW Community Development Group has a volunteer board of directors representing a broad range of community skills and involvement. CAW Community Development Group's mandate is to improve the standard of living for all Canadians by providing assistance to groups providing affordable housing to people with low and modest incomes. Our organization was therefore very pleased to see the initial Bill 90 and the subsequent Bill 120 initiative, which will increase residential rights across Ontario.

As our experience lies mainly in the area of subsidized housing, my comments will focus mainly on accessory apartments and garden suites.

Society has changed in Ontario over the last 40 years. The population has increased, but the number of new households has increased more significantly. Social changes continue to occur across Ontario. In our society, there are more single-parent families that need to be housed in a stable environment. Our neighbourhoods need to continue to better house our population made up of non-traditional households and smaller households seeking appropriate and affordable housing in municipalities where development land is running out.

Renters have consistently formed one third of Ontario's total housing population. All renters deserve to have the same rights and privileges under our laws as any home owner. Some of the apprehension over this legislation is perhaps an image of who is the renter: young, male, transient or noisy. However, tenants themselves represent a cross-section of the population. Tenants are just like you and I and are simply in a different stage of life. Tenants themselves, like home owners, if allowed options will choose to move into neighbourhoods which they find attractive for many of the same reasons that you as a home owner would. Tenants can value the neighbourhood community as much as the home owner and deserve to have this option. Tenants have the right to choose to raise their children in a good environment, and should not be forced because of their financial situation to live in a neighbourhood that is not what they are accustomed to.

Historically, illegal conversions have been, for the most part, accepted by communities but have been denied legal status. This is a very dangerous trend, as it leaves both the landlord and tenant at risk. Owners are subject to being reported by neighbours. Tenants have had no benefits from improved codes and regulations. As we have seen in the past, if regulations remain too stringent, illegal units will continue to be developed, leaving people at risk as there are no standards through which they can seek protection.

Under the new legislation, people living in illegal and legal apartments will be protected under the Landlord and Tenant Act, the same act which governs tenants currently living in larger apartment buildings. This legislation will give all tenants an opportunity to speak up without the immediate threat of eviction and closure of their home. Legalizing apartments will increase the likelihood that owners will comply with regulations if they can market the unit in cooperation with the municipality rather than being forced to close it down. There will be comparable protection through fire and building code revisions which owners have historically enjoyed. The municipality will have increased powers of entry in order to ensure that units meet relevant codes.

Accessory apartments will increase the choices or options available to people who require affordable rental housing. In a province where renters consistently form one third of the population of Ontario, we need to ensure that all people have access to housing and options for the different stages of their lives.

Across Ontario, it has been found that, in general, accessory apartment rents are lower than conventional apartment building rents. A senior who wants to keep their independence would prefer to rent a portion of their

home to a tenant or single-parent family. This will allow the senior to remain in their home, give them the independence they need and companionship. This will also help the single parent to have lower rent rather than pay the cost of living in a home alone, remain in the community they have a right to choose rather than be forced to live in a community where the rents are lower, and they will also have a person they can seek knowledge and guidance from if they so choose. It has become common knowledge that to match up the seniors with the children is of benefit to all parties.

The development of this type of housing can help to balance neighbourhoods. Legal apartments will pay their fair share of taxes. They will encourage the renewal of older housing, in that home owners who are having financial problems can fix the older home with the income that can be derived from the apartment. We will see an increase in the number of people utilizing the current neighbourhood structure: sanitation, public transit and neighbourhood schools. This will help to increase this proportion again. However, as the proportion will most likely never reach the numbers originally intended, there should not be the concern of overcrowding.

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Overconcentration has been addressed by allowing only one unit as of right in each home, thus allaying some fears of massive change in a neighbourhood home. It has been found that approximately 12% of home owners would consider this option. This means at most only one or two units in a block. This 12%, if ever attained, would not happen all in one year but over time, as has been the case in cities which have allowed this type of housing. As it is expected that most of the conversions will be by the home owner, the same standards for housing upkeep will remain.

Home owners, who have the opportunity to pick their tenants and therefore their most immediate neighbours, will most likely pick ones who are trustworthy and of good character, who closely reflect their own living standards. Again, with options made available to them, thus allowing tenants the ability to choose where they will live, many will choose a neighbourhood for the same reasons as a home owner and will therefore also value the standards and upkeep of the community at large.

Our organization specifically has learned that people are looking for affordable housing. Many learn that there are numerous other benefits to living in close communities, security and companionship as an example. This type of housing falls in with the thinking along the line of long-term health care reform by encouraging people to stay within their communities and have the opportunity for social structures to continue to play a large role in their lives. It encourages seniors to stay in their homes longer, with viable financial and community assistance. This can also help current home owners keep their homes, and help young couples as they endeavour to purchase and afford their own home.

There will be no large additional government costs to implement this type of housing. Therefore, we are increasing affordable housing options, putting money into individual taxpayers' hands and saving the general

taxpayer money. In the non-profit and co-op sector there are long waiting lists for affordable housing. This program will help reduce these long lists, as it will give the people a larger number of choices about where they want to live.

In general, the present bylaws are not effective. There are many existing illegal units in the province. The most effective way to deal fairly with the issue of accessory apartments is to legalize them.

While it once was an ideal situation to move into a community we all were accustomed to, two-parent families are not the only type that exist today. There are more one-family parents, seniors and handicapped who would like the opportunity to live in safe and affordable housing. We cannot continue to endorse policies that discriminate against households that do meet the standards for what we think make up a stable community. We should not establish barriers to the segment of our population currently in the greatest need of affordable housing: singles and small families. Singles who choose to live together to save money and live in a more expensive community should be allowed to do so. Seniors who choose to convert a portion of their home, as they no longer use it, if they need the extra money or for whatever reason, should be allowed to do so.

When this legislation is passed, we would like to encourage the ministry to facilitate a means of tenant and landlord education to ensure that everyone is aware of their rights and responsibilities under the Landlord and Tenant Act and this new Bill 120. We would also encourage the Ministry of Housing to continue its current trend of regulating rental units under the Rent Control Act. We therefore respectfully endorse the province's accessory apartment and garden suite legislation.

Mr Grandmaître: How would you describe yourself? When I look at the agenda, it's Labour Community Service Centre, Federation of Windsor-Essex County Tenants' Associations, Concerned Citizens for Access and Equality, Citizen Advocacy, Windsor-Essex. How different is your CAW group from these other groups?

Mr Earl Dugal: The difference between the organizations is that the CAW Community Development Group basically deals with the development and creation of new units through the ministry's allocation process and also with education about co-ops in particular for people who are going into the co-op sector.

The Labour Community Service Centre board, or Housing Information Services, deals with all the people in the Essex county and Windsor area, dealing with all types of different housing that is already there.

They are two separate entities, two organizations. They do not have the same purpose. The purpose of the CAW organization is basically to build new developments or renovations of existing stock and also, on the co-op end, for the education purposes of the people who are going to be maintaining the buildings.

Mr Grandmaître: But you must have some kind of linkage with these other groups.

Mr Dugal: There is no actual linkage, other than that some members of the board of the Labour Community

Service Centre are from the labour movement. The CAW Community Development Group is an organization put together by boards of directors of the national union, the CAW.

Mr Crozier: I appreciate your attendance here this morning. I can speak highly of the CAW and the work the development group has done in Essex county and, more particularly, recently in Leamington.

I want to make an observation, though. There was a suggestion earlier today that if the ability to determine where basement apartments would go were left to municipalities, they would be élitist. Well, I suggest that even if there weren't this legislation, it's élitist anyway, because chances are that these basement apartments are developed or will be developed in perhaps older neighbourhoods where housing is not as expensive as it is in some other areas. Whether we have the legislation or not, we may still have the same élitist problem. On the other hand, it's been my experience with communities that they aren't élitist, that they frankly look at the situation and conduct their planning and zoning in the best way they can with the best advice they can.

But more to the question. I know where the CAW group works in this area. Will you be involved in financing basement apartments? If you won't be, why are you here?

Mr Dugal: The interest we have as a provider of any type of housing is basically in the people or the tenants who would be using that housing. Maybe some of the members have read this in the Windsor Star: We approached city council on Bill 120 when it was first being brought to each council, to discuss the possibility of getting council's endorsement for this bill. We were not successful, unfortunately, in convincing council about the need for some type of bill that will protect people who are living in illegal housing in basements.

Our organization basically deals with the needs of people who do not really have anybody to speak for them. We were the only people making a presentation on behalf of people living in illegal apartments. I say to this committee in all honesty, and I said this to council, if there had been a fire in the city of Windsor, as there was in Brampton during the Christmas holidays where a family was burned to death, maybe their position would change drastically, as it did in the late 1960s when a family in Windsor was burned totally out of an apartment above a commercial building and new laws were put into effect to try to protect people who had no protection.

Our position has never changed from that. We believe that if the legislation comes forward, it will allow the people who want to create basement apartments the right to do it, but under conditions the government has stated for people to live safely.

It's unfortunate that tragedies happen. I say to this committee, as I said to council, if it happened in the city of Windsor, I would be back to council blaming them for what happened, not because the people themselves didn't have a voice. We speak on behalf of people in all different types of housing.

Mr Crozier: Very briefly, Earl—we can talk about

this after—I have a motion by Councillor Sheila Wisdom that in essence says, “the draft provincial legislation...respecting apartments in houses as of right and garden suites...be adopted.” Has that changed since 1992?

Mr Dugal: Yes, it has. It was only garden suites that they finally zeroed in on. It had nothing to do with apartments in basements. Right now we’re being told by some councillors that there are 50,000 illegal apartments in the city of Windsor. I find that ludicrous. I don’t think there’s that many. I think it’s more like 15,000.

Mr Crozier: Windsor council always exaggerates, doesn’t it?

Mr Dugal: I guess they do a little bit. I get a little bit excited also when I speak to people about this problem, because I don’t want to see that happen. I remember the Anderson family. I remember raising money to bury that family. I remember those things, because there was no legislation to protect those people.

As servants of the public, you’ve got to understand that people who don’t have much say and are afraid to come forward to explain their concerns have people like us. I agree with Bruce: Why are we here? We build housing. We’re here because those people are not here protecting themselves, because they’re afraid if they come they’ll be thrown out of the houses they’re in. That’s why we’re here.

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Mr Arnott: I’m glad you endeavour to work with your local council on these issues. I think that’s proper. Do you feel it’s a good thing, generally speaking, for the provincial government to step into the traditional municipal responsibility of zoning and planning?

Mr Dugal: I believe certain issues in Bill 120 have got to be dealt with through the government. That’s what I believe at this point: It cannot be done through the municipalities. Unfortunately, I believe it’s too much the situation that private people are putting pressure on the municipalities not to do certain things. It’s the old lobby game. Everybody lobbies to have something. All I’m saying is that the people never lobby, so they have an opportunity to meet with the committee about those issues. I guess I speak for most of them: Because they’re not here doesn’t mean they don’t care. They do care, but they’re afraid.

Mr Arnott: The provincial government is subject to lobbying too.

Mr Dugal: They’ve got my support.

Mr Arnott: I kind of sensed that.

Mr David Johnson: Stick with them. They need all the help they can get.

Mr Arnott: If you look at the history, certain responsibilities have been devolved to local government for specific reasons. We’ve heard those reasons and they’ve been repeated many times, but it was primarily to account for local differences. Also, there’s the reality that local government, because it is right there, is more responsive to people than a provincial government, which in the case of Windsor is four hours down the road. Do you absolutely maintain that zoning and planning should be a provincial responsibility?

Mr Dugal: On the issue we’re dealing with, I have to say, in all honesty, that the municipalities look at dollars—and Bruce will tell you that—when they go into deliberations about whom they’re going to hire to protect the people who are there. That was one of the big issues. But what price do you, myself or anybody put on a person’s life? That’s the issue here. People are looking at dollars, but when it comes to a tragedy, they’re all rallying around to say, “We’ve got to do something about it.”

We feel the legislation, especially covering the apartments in basements that are illegally there now, is the only way it can be brought forward at this time. If the legislation is put into effect, I’m sure councils and municipalities will have input into what’s going to happen in those areas; I’m sure that’s going to happen. But right now there’s nothing. Let’s not wait for people to die before we do something to help them. It doesn’t make any sense.

Mr Arnott: You must have some councillors who are sympathetic to your perspective on this issue.

Mr Dugal: Yes, I do.

Mr Arnott: But not the majority.

Mr Dugal: No.

Mr David Johnson: The reality is that the municipalities and the fire chiefs we’ve heard are saying that if safety is the issue, they have to have the right of entry. They say Bill 120 does not give sufficient powers of entry. If that’s your issue, that’s what they have to have, and this bill does not deliver.

In terms of lobbying and responsiveness, the reality is that the lobbying and the response is at the local level. There’s a far greater recognition of community needs at the local level than at the provincial level. I can tell you, having been a mayor and a councillor at the local level for more than 20 years, we see deputations every day of the week. And then there’s that democratic process called the election, where all these issues come up, issues of housing and basement apartments.

There are concerns out there. The concerns that come forward revolve around problems particularly with absentee-owned properties. We’ve heard that too through this committee, properties that aren’t properly maintained and properties that cause problems in the neighbourhood. With the lack of right of entry for the fire chief or the property standards people, they can’t get in to correct these problems. The municipalities are saying, “If you can give us tools to correct those problems”—I have not heard one municipality in these deputations we’ve had over the last couple of weeks say it wouldn’t support accessory apartments, basement apartments. They all support it, but they need the tools to make sure they’re safe and make sure they can deal with the problems.

Mr Dugal: Dave, if I may call you Dave—

Mr David Johnson: That’s my name.

Mr Dugal: The issue is dollars. Coming before you today, I’m not asking you for one cent. I’m asking you to protect people’s lives.

You were a mayor, and obviously you’ve turned down

some deputations and later regretted it, because things didn't go the way they should have and therefore it looked bad that the council didn't accept it.

We have taken a course here of trying to protect people's rights in illegal apartments that exist. If legislation is brought forward by the government to the municipalities that says the apartments in basements have got to have some type of regulations, obviously the dollars are what the municipalities are looking for, extra bucks to hire extra people to do this type of work. Those areas are still going to be talked about. This isn't the end of the world or the last thing we're going to hear about, what's happening on Bill 120.

All I'm saying to you is try to remember, when you're dealing with the issue, the people who are maybe not as fortunate as ourselves living in our own homes, who have to live in a basement apartment and who have no protection whatsoever because there is no legislation at this point to protect those people—other than squealing on the landlord, who then throws the people out of the house. And what does that do? It creates more housing needs for people who don't have housing.

Mr Lessard: I have one question that follows up on the opposition's question with respect to the responsibilities of the municipality, whether you thought it was the municipality's role to improve safety in illegal apartments. Your experience is mostly within the city of Windsor, but I know the CAW Community Development Group is active around the province. If there weren't provincial legislation, do you think any municipality in Ontario would pass bylaws to address safety issues in illegal apartments on its own?

Mr Dugal: No, I do not.

Mr Winner: I was surprised to hear that there were 50,000 illegal apartments in Windsor. The government estimates 100,000 for the whole province. I knew Windsor was a popular place, especially with the casino, but not half.

These issues are often open to interpretation, the issue of inspection for example. Mr Johnson declared that this doesn't really help with powers of entry for municipal inspectors. You've probably studied the legislation closely enough to know that while it still maintains reasonable grounds to get entry into a premises, it relaxes somewhat the requirement to seize evidence in order to get it. It's very difficult to seize evidence that there's no proper emergency exit or smoke alarm or that the ceiling's too low or the partitions are inadequate. You don't have to go in, as I understand, any more and get the photographs, so I think it really is beefing up the powers of inspectors, contrary to what Mr Johnson suggested.

I want to ask you something a little more fundamental. We often hear from municipalities, not so much from home owners. I can understand why the opposition might be mildly irritated that what it predicted in the Legislature, massive numbers of home owners coming forward to oppose this legislation, just haven't materialized, but what we have heard from a number of people is that they live in neighbourhoods that could be more inclusive. Why is it that municipalities, while declaring their right to

zone multiple-family or single-family, are kind of dragging their heels on this?

Mr Dugal: I honestly believe that the lobbying that's being done by people from different parts of our city unfortunately plays a big part in our council's decision about whether it should get involved in making changes to legislation being brought forward to the city. That happens throughout most municipalities, unfortunately. I would say that's one of the reasons.

But one of the big reasons is cost. It comes down to: Where do you get the extra dollars, without raising taxes for people in the city, to give the service to make sure the legislation is enacted the way the government wants? Again I say to you, burn out three families in basement apartments in the city of Windsor and they won't care about the cost. The cost won't mean anything. That's the sad part. Why should we wait for tragedy to strike before we do anything? People have a right to be protected. They understand that, but there's still a lot of pressure.

One of the concerns was, "Maybe we can do it in old east Windsor, but let's not do it in south Windsor," south Windsor being one of the most prestigious places in the city, along with Riverside Drive, "Maybe we can look at doing some of them, but the areas we want to put them in and not throughout the city." That's the sad part about that too. I believe, and I think most people believe, that people have a right to live anywhere they want in this city, and if the legislation is put in and somebody wants to do something with their apartment in south Windsor or Riverside Drive and they do it according to the code and according to the law, they'll be entitled to do that.

You'll hear from people today who will tell you the sewers will back up and that every other thing in the world's going to happen. We don't see that as a big problem in terms of the number of units you'd be talking about. But if we're going to do anything, let's legislate it so that people are protected.

The Chair: Thank you for your presentation. As I've told other presenters, we will be considering this bill clause by clause the week of March 6.

I remind members that we reconvene at 1:30 sharp. You have about an hour to go find a bowl of soup.

The committee recessed from 1232 to 1333.

CITY OF WINDSOR HOUSING ADVISORY COMMITTEE

Ms Marina Clemens: My name is Marina Clemens and I'm here today as the chair of the city of Windsor housing advisory committee. This committee is made up of developers, providers, social service people, people from special-needs housing within the city of Windsor and it is a committee of council.

We have given you our prepared brief and we would just like to highlight some areas within the brief.

First of all, the province ought to be recognized for the initiatives that make up Bill 120, particularly the sections which intend to protect the rights of vulnerable tenants in care homes. It would seem upon initial reading that these amendments are worthy of support. The city of Windsor housing advisory committee, however, has not had sufficient time to respond to those particular amendments.

We know that other people within our own municipality are making submissions today to you, so we would leave that up to those who we feel have more expertise than we do.

Therefore, this submission will focus on the proposed amendments to the Planning Act and the Municipal Act as first announced within Bill 90. As the standing committee is aware, the ministries of Housing and Municipal Affairs released the draft legislation, Apartments in Houses, for public consultation in June 1992.

The city's housing advisory committee formed a subcommittee to provide a response paper, which included representatives from the housing advisory committee, the planning advisory committee, the University Ratepayers' Association, Legal Assistance of Windsor and the building and planning departments. The report of the subcommittee was approved by the housing advisory committee.

On November 16, 1992, city council considered the subcommittee report and adopted resolution 1314/92, supporting each of the five recommendations contained in the report. A copy of the response was forwarded to both the ministries of Housing and Municipal Affairs.

The draft legislation took the form of Bill 90, without addressing any of the concerns made by the city. While Bill 90 was dropped on November 23, 1993, with the announcement of Bill 120, both the city and the housing advisory committee stand in support of the original submission made in October 1992. This presentation will highlight the concerns of the city with respect to apartments in houses, garden suites and the improved powers of entry and single housekeeping units.

I'd like to introduce Michael Cooke and Ed Link, who will do some of the other presentation.

Mr Michael Cooke: Thank you. My name is Michael Cooke. I'd like to move to page 3 of our brief and section 2.2 on implications with regard to accessory apartments.

While the proposed legislation can be commended for its efforts to increase the supply of affordable rental units and provide construction and renovation jobs across the province, it can also be criticized for ignoring the conditions within local areas which may not be conducive to intensification initiatives.

In the province's Land Use Planning for Housing policy statement, 1989, residential intensification was to be permitted in areas that met the following criteria—and I think you're familiar with those criteria—but the essence of them is, where the existing demand was there, the potential in terms of the existing building stock and also just the need to provide a mix of housing throughout the municipality.

Bill 120 no longer takes regard of these criteria. Each unit of a detached, semidetached and row dwelling would be permitted to add an accessory apartment, irrespective of local servicing and/or land use problems which may prevail. The blanket approach proposed by the province negates the city of Windsor's efforts to promote intensification in neighbourhoods that satisfy the previously adopted government criteria.

In 1991 the planning department prepared a report to the city's planning advisory committee, recommending a residential intensification strategy appropriate for Windsor and at the same time consistent with the requirements of the provincial housing policy statement.

The report suggested that there was a need for a policy to guide residential intensification activity in the city. It reviewed alternative policy approaches and concluded that one which encourages intensification activity in areas where demand is most evident, where the physical potential to convert housing stock exists and where municipal services are adequate, would best satisfy both the municipal and provincial housing objectives. In that review process, we conducted an extensive series of discussion papers, public participation and input which brought forward our final recommendations that I have before me here.

As part of the analysis, the intensification activity during 1989 and 1990 revealed that 51 out of 53 residential conversions occurred within planning districts regulated by our zoning bylaw 8600. This pattern, combined with the findings of the city's previous housing strategy study, suggested that an intensification strategy should restrict as-of-right conversions to certain planning area districts, as identified on map 1 attached to the document. We did find an as-of-right area where it would be most appropriate for this type of conversion activity, where services were there.

In order to implement the strategy, amendment 140 to the city's official plan included intensification objectives and policies applicable to the entire municipality. Accessory apartments created through residential conversions, however, were to be limited to specific planning districts, particularly the central, Walkerville, university, Sandwich and south central. In addition, an addition to the zoning bylaw was recommended to implement the amended policies of the official plan.

As part of that study, we also had a local university ratepayers' association which is concerned about the residential neighbourhoods in and around the university and as part of a large student housing study.

The findings of that study identified that intensification within residential neighbourhoods in proximity to a major university can be very contentious. Demand for dwelling units is often greater, and there is a risk that additional increases in residential accommodation can alter the character of the area.

As a result of other problems facing the neighbourhoods in the area of the university—traffic, on-street parking, transient residents etc—it was recommended that the Sandwich and university planning districts should not be included within the as-of-right locations for accessory apartments.

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Despite the city's efforts to encourage the provision of accessory apartments in neighbourhoods where they can best be accommodated in terms of demand, physical services and capacity for intensification, the province proposes to override local official planning and zoning bylaws and permit accessory units as of right in every

residential area. The province stated that "drastic action is necessary because few municipalities have implemented the intensification provisions of the housing policy statement." Communities like Windsor, however, which have taken steps to carry out the directive, are unfortunately being penalized and tarred by the same brush.

The very essence of that is the amount of work that we've done at the community level, which was the first, initial, proposed, preferred method of the province. Because other municipalities haven't adhered to that procedure, our work is all lost.

Members of the study committee feel that the proposed legislation as it relates to the provision of accessory apartments goes too far. The criteria contained in the housing policy statement for the selection of suitable areas to permit accessory apartments should be maintained. Furthermore, municipalities should determine the limits of such areas based on proper land use studies and public input from local residents.

Part of our recommended action—and these are recommendations approved by the housing advisory committee and the city of Windsor—essentially is that the as-of-right portion of the amendments and proposed amendments fails to take into account the city's planning efforts and therefore cannot be supported.

We also make a suggested recommendation that perhaps the province require that municipalities which have not adhered to the policy of the land use housing policy statement, maybe just in those instances, ought to be legislated to adhere to as-of-right planning.

Ms Clemens: We would just like to cover garden suites a little bit. I'm referring now to page 10. The members of the study committee support the proposed legislative amendments pertaining to garden suites, particularly as this form of housing intends to facilitate the needs of the elderly or the disabled as an alternative to institutionalization.

The legislation does, however, need clarification on a number of issues. The potential for abuse in the provision of garden suites is so great that the Planning Act must allow for municipalities to apply site plan control to all suites. Municipalities would thereby have the authority to regulate the type of construction, the size, the height or bulk of suites, and also ensure compliance with the current Ontario Building Code.

The legislative amendments proposed would also need clarification to ensure that municipalities will have the authority to restrict the occupancy of garden suites to elderly or disabled relatives of the home owner. There are some who have suggested that this type of restriction may be contrary to the Charter of Rights. If this is the case, other issues regarding occupancy will have to be addressed.

Provisions need to be incorporated for periodic review and extension or cancellation of approval of individual units. As well, there should be amendments to the Landlord and Tenant Act to provide appropriate and fair methods of terminating tenancies when an existing garden suite loses its approval.

A final provision that is required in the legislation would call for regulations to allow for an apartment in a house or a garden suite, but not both on the same property. This provision would assist in reducing the effects of overintensification in some neighbourhoods that would place excessive demands on services and have a negative impact on residential neighbourhoods.

What we are saying, in conclusion, is that the city of Windsor supports the efforts of the province to amend the Planning Act and Municipal Act to permit garden suites. Given the extent of items that require clarification and the need for additional provisions and regulations, it is recommended that all amendments pertaining to garden suites be addressed in a review and public consultation process separate from Bill 120.

Mr Edward Link: My name is Ed Link. I'm building commissioner for the city of Windsor. I'd like to speak on a few of the enforcement matters which are primarily my concern, in particular the powers of entry.

The city of Windsor enacted a property standards bylaw dealing with residential units back in 1957 through special legislation provided by the province of Ontario. I believe we were the third municipality in this province to enact such legislation. We have taken a very proactive stance in that regard.

With regard to the powers of entry, we believe that the city of Windsor supports the legislation to expand the authority for powers of entry and we feel that it is very essential in order to maintain reasonable standards for dwelling units.

But we also believe that similar amendments to powers of entry should be provided to other enforcement agencies related to such things as the enforcement of the fire code, licensing bylaws—let's say, for example, lodging homes and that—zoning bylaws, the Ontario electrical code etc. There are many players involved in maintaining standards, and they should equally be afforded the same ability for powers of entry.

With regard to the single housekeeping units, which is elaborated on on pages 13 and 14 of this report, we see some difficulty with, once again, the enforcement of reasonable standards. We believe our recommended action speaks for itself and we feel the ministries of Housing and Municipal Affairs should be advised that the city of Windsor objects to the draft legislation pertaining to single housekeeping units and the removal of municipal authority to restrict the number of unrelated persons who reside in one dwelling unit.

We believe that additional requirements, in order to alleviate our concerns, could be through enhancement of the licensing provisions for lodging, rooming and boarding homes. In order to do so, we need workable definitions that will stand up in court related to the definitions: What is a single-housekeeping unit, what is a lodging home, what is a rooming or boarding home.

We also believe that municipalities should be able to collect licensing fees, permit fees and other fees so that inspection services and approvals can be provided on a full-cost-recovery basis and that there will be no burden on the taxpayer.

Ms Clemens: In conclusion, we would like to say that we are certainly in support of the reasons for permitting another apartment in a home, especially the reasons given on page 18 within the news release given by Ms Gigantes on November 23.

We certainly want to make a source of affordable housing within our community. We believe that it will ease the financial burden. We certainly believe in generating employment. We certainly believe in supporting neighbourhood diversity. However, what we are saying is that we certainly need to do it within the parameters of the Planning Act and the Municipal Act and have some say in that within the criteria that we see that we have done an extensive amount of work in doing and should not be penalized and should not be brushed with the same brush as Toronto or other municipalities. Thank you.

Mr David Johnson: I'd like to thank you very much for a very thoughtful deputation. Obviously the city of Windsor has put a great deal of effort into this, and I might say that, while your efforts have been tremendous, there have been many good efforts in many municipalities across Ontario. A lot of the words you're saying here reflect comments, to some degree, of many other municipalities as well.

I think what we have to bear in mind is that to change the zoning and official plans, plans that have been in place and have worked with communities for many, many years, is not an easy task. One just doesn't flick a switch and change zoning and official plans overnight, because it's very important to people within the community.

You went through an extensive process that involved the community to come forward with these conclusions. I wonder if you could just tell us a little bit about the number of meetings you had, the number of people involved and that sort of thing.

Mr Michael Cooke: As part of our land use planning for housing policy study, we conducted a series of seven discussion papers. After the completion of the first three, we had a public meeting advertised in the newspapers, and as part of that process invited people to our planning advisory committee meetings with the city. Those reports were amended and included public consultation in their writing from people in their community, various citizens' groups and local representatives, consumers of housing as well as developers and what not.

For the final four discussion papers, the planning department, again with their consultation, conducted those and had a final public meeting on the entire thing. Of course, as part of our official plan amendment which was going to bring as-of-right planning into portions of the city, we required the ordinary public meetings as requested under the Planning Act, meetings with council and what not.

Mr David Johnson: It would be obvious to state, I guess, that these meetings involved—certainly we've been listening to special-interest groups today and in other parts of this hearing. Any in this particular area would have been invited and would have participated, in all likelihood: individual citizens, as you say, consumers of housing, just all components of your society here in Windsor would have been invited and probably most of

them would have participated in this process.

Mr Michael Cooke: Yes, exactly, through our newspaper. We treated them as though they were official plan amendments in terms of notification and what not.
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Mr David Johnson: The consensus was that in terms of what you've come up with, which is a solution tailored to meet Windsor's needs, I presume, this would provide the adequate or appropriate level of housing support. Is that what was the consensus?

Mr Michael Cooke: Yes, that's exactly it. That map you're looking at identifies the area where, above and beyond current housing that's being developed, whether it's new subdivisions or new apartment buildings or non-profit housing, the private market that would be adequate to—and that's why part of this discussion paper looked at everything from our supply of land that's currently available for development, our housing population, our projections of housing increases and what not.

Mr David Johnson: And I presume within the study that you've approved here that the city of Windsor is prepared to permit that and to do the proper enforcement to ensure that the units in there would be safe from a fire point of view, building point of view, property standards, the whole works?

Mr Michael Cooke: Definitely. Yes.

Ms Clemens: One of the other pieces that we did have, we had a number of consultations with consumers and the old access-to-permanent housing committee, which had almost more than three quarters of its members who were consumers. We really spent a great deal of time consulting with them, and one of the things that kept coming back most was that we don't have the best transit system in the city that reaches out to all areas.

For many consumers who were on a fixed or a low income, whether they be elderly or sole-support parents or single people, it was very important that they be housed and wanted housing within the areas within our community that had access to a decent transit system. We don't have that out in some parts of our municipality, so that kept coming back to us. A great deal of attention was paid to that to provide that kind of housing within areas that were accessible.

Mr Winninger: My questions I think are directed to Mr Cooke. You mentioned that the official plan amendment was going to include accessory apartments as of right?

Mr Michael Cooke: Yes.

Mr Winninger: Is this number 140?

Mr Michael Cooke: Yes, that's correct.

Mr Winninger: Okay. I'm advised that Windsor's official plan amendment 140 doesn't make any reference to permitting apartments in houses. Is that true?

Mr Michael Cooke: Yes, it is. Our original submission to the Ministry of Municipal Affairs did include as-of-right conversions and the amendment was sent back. I think it was in the process of Bill 90 coming into effect after the apartments-in-houses legislation.

The ministry advised us to withdraw all references to

conversions in our official plan amendment. I don't have the correspondence with me but that was the case. So we did that accordingly; all as-of-right areas of the map included in here were deleted, I think with the ministry's knowledge that it was going to be legislated.

Mr Winninger: But what I'm hearing is that your official plan amendment would have included apartments as of right anyway.

Mr Michael Cooke: Exactly.

Mr Winninger: Okay. Second, we had some evidence this morning from various presenters that there are large parts of the city, and the south end was mentioned, where there are some fairly affluent neighbourhoods, and I assume with large homes, often on large lots, which are excluded from the planning district for which the city allows apartments in houses.

Now, presuming that some, if not all, of those neighbourhoods will have sufficient services, because they have modern infrastructure, and normally in suburban areas new schools, why would you tend to confine the as-of-right to the inner city and not to the suburban areas which make up a large portion of the municipal boundaries?

Mr Michael Cooke: Part of that is the point that Marina just mentioned, that in terms of proximity to services, these are residential areas where the only thing likely in parts of the community is a church and a school and the rest is residential areas, much of them without sidewalks.

Mr Winninger: But presumably, if you're allowing new construction in these areas, there have to be services to accommodate the new construction. I agree our bus service, our public transit service doesn't always cater to an automobile-dominated suburban society out there, but isn't this kind of going in the opposite direction from some of the recommendations that Sewell makes about compact planning, intensification?

Mr Michael Cooke: Yes.

Mr Winninger: What's good for home owners should also be good for accessory apartment tenants, in my view.

Mr Michael Cooke: Yes, provided they have cars and what not, but I think if we're trying to create affordable housing for rents that are in a much more modest income range, as the policy statement requests, a range of people of various incomes—

Mr Winninger: What about tenants who do have cars? Why would you want to exclude owners from converting apartments to house tenants who do have cars?

Mr Michael Cooke: In terms of our own analysis, where we looked at a two-year period when we were conducting our studies of 53 conversions, 51 were in these areas, so I think it identifies that in terms of the demand for home owners to convert—

Mr Winninger: What if there are one or two home owners in a suburban area who want to convert? Would you say to those one or two home owners, "You won't be able to convert because the majority tend to be in the inner city"?

Mr Michael Cooke: I think to say for the one or two,

and quite frankly the majority of residents, when we have hundreds of families and residents in our university area who are very concerned about the proliferation of accessory units, weighing the demands of the two who may be interested in living in an accessory apartment in, say, south Windsor—which isn't an extremely affluent area; it's a very reasonably family-oriented home neighbourhood—there's a far greater majority of individuals in areas where they're very concerned about the slide of the neighbourhood, and accessory apartments in those areas will make it much worse.

Mr Winninger: We have university-related problems too but that's not the solution.

Mr Grandmaître: Basically, what you're saying is that Bill 120, as far as the city of Windsor is concerned, is not needed. You've met your responsibilities in the past and you will continue to meet your responsibilities. The Land Use Planning for Housing policy statement back in 1989 is now reflected in your official plan—

Mr Michael Cooke: That's correct.

Mr Grandmaître: —and also in your zoning bylaw. You feel that you're being punished, you're being singled out for the simple reason that you've done your work in the past.

I agree with the ministry and the minister that not enough municipalities did the work. Windsor did, but why should municipalities like Windsor be punished because you've respected your engagement or your responsibilities in the past and all we need is some fine-tuning to the existing legislation, for instance, the right of entry, and have the building code, the fire code and all of these codes respected? This is what municipalities in the province of Ontario need right now.

Mr Michael Cooke: Yes.

Mr Grandmaître: I'm just going to switch now. How many additional units would you say Bill 120 will create in Windsor?

Mr Michael Cooke: I guess there's no real certainty. I could tell you that in each of the last five years, on average, in terms of people coming into the building department for permits for what we would call accessory apartments that are legal, we've probably had 40 or 50 per year in each of the last five years.

Mr Grandmaître: You mean zoning change applications?

Mr Michael Cooke: Right, or whether it's an existing illegally conforming unit that they've gone through for rezoning and they've been granted that, or else the zoning is permitted and they're just applying for their permit, in all those cases. Now, as to how many have been done illegally, we're not sure.

Mr Grandmaître: You don't know the number of illegal apartments in Windsor?

Mr Michael Cooke: No, we have no idea how many.

Mr Grandmaître: How many basement apartments do exist in Windsor?

Mr Michael Cooke: No idea.

1400

Mr Link: If I may, apartments in cellars are pro-

hibited under the municipality's property standards bylaw currently, because we felt that, considering the older housing stock, these areas tend to be damper, more prone to health-related problems, and there was low ceiling height. So the municipality, in its property standards bylaw, prohibited cellar apartments. Basement apartments, once again, more out of the ground than in the ground, were permitted, but we have really no record as to what number.

At one point for about two years, through a provincial grant, we ran a home planning advisory service to encourage people to come in and upgrade these units and to create accessory apartments. The funding for that has since terminated and we've discontinued the program more or less, but in that period, I believe there were several hundred applications that came into the office. Once again, some of these were totally legitimate and they were just seeking additional funding to upgrade units.

Mr Grandmaître: One last question, Mr Chair? One very short one?

The Chair: I don't think so. The time has expired.

The Chair has one brief question. Could you tell us, because you would have some expertise, what the vacancy rate is in the city of Windsor and area and what the average rent of one-bedroom and two-bedroom apartments might be in the area?

Mr Michael Cooke: Sure, I can speak to that. Our figures for that information are based on the Canada Mortgage and Housing Corp vacancy rate surveys it does twice a year. In their most recent survey of October of last year, the rents for one-bedroom up to three-bedroom apartment units range anywhere from about \$450 on the low end up to \$650 for three-bedroom units. It's a weighted average. The vacancy rate is just under 3% at present.

Mr Crozier: A point of information: I think that's what we were getting at this morning. It shows a vacancy rate that's considerably higher than what might have been suggested earlier.

Mr Grandmaître: Good point.

The Chair: Thank you, Mr Crozier.

Thank you very much for coming today. We appreciate it. We will be considering this bill clause by clause the week of March 6.

CENTRAL PARK LODGE, WINDSOR

Mr Jim Anderson: My name is Jim Anderson and I have been general manager of Central Park Lodge, Windsor, for the past 10 years. Central Park Lodge is a chain of residential care facilities, 12 of which are in Ontario and 28 across Canada.

What I'm here to speak to you today about is more on a front-line level. I typed this myself, put it together and tried to put myself, over the 10 years, the things that we have run into. There are many parts of the legislation that our company has no problem with. There's a detailed response from the residential care association, which I'm certainly not going to go into, that you've already had. So this comes from my perspective as an operator for the past 10 years.

We have no objection to rent or rate control. In the last 10 years at Central Park Lodge, our yearly increases for both rent and care have never surpassed the allowable rent increases in total. Since this legislation only covers the rent portion, which at the most only amounts to 20% to 25% of our total costs, we see no problem for operators.

The Landlord and Tenant Act: security of tenure: As of today, Windsor has bylaws that control residential homes. I must add, there are only three municipalities in Ontario that have bylaws; Hamilton and Ottawa are the other two. In these bylaws, there are rules concerning what residents you can admit or readmit at your care level. This bylaw is designed to protect residents from being retained or admitted to residential homes that cannot care for them properly. A health care professional, family doctor, discharge personnel, placement or, in the case of Windsor, VON determines if the resident has reached an extended care state and recommends they move on to a higher level of care.

Under this legislation, if the family or resident refuses to move on, who will be responsible if something should happen to them? Who will now make the determination that the resident is beyond our care? The Housing ministry? If a resident goes to a hospital and is assessed to have reached extended care level, who will pay the fine if we readmit them? The Housing ministry?

If Minister Dave Cooke's aunt, who now resides with us at Central Park Lodge—and happily, I must say—reaches this state and is not moved on and has a serious incident occur because of a lack of adequate care, who will answer his questions? The Ministry of Housing?

If unscrupulous operators use this legislation to maintain occupancy by retaining people beyond their care level and incidents happen because of this, who will answer Professor Lightman? The Housing ministry?

With all due respect to Professor Lightman, the isolated incidents he so eloquently described to you last week will be multiplied tenfold if there's no mechanism put in place to move people on to higher levels of care. Most of the most serious incidents that have occurred in residential homes have occurred because of improper placement in the first place or retention beyond their care level.

Conversion and renovation: Ten years ago, when I started at Central Park Lodge, our average age was 86 and we had an assisted-living floor for extra care. That took them a little further than the stage, not to nursing home, but assisted them in staying with us a little longer, where we could care for them a little better. By 1987 our average was 83 and we had to convert the assisted-living floor to room suites to meet our market demand of that time.

Now our average age is back to 89, and last October we renovated and opened the same floor to an assisted-living floor for extra care for our residents. All of this was done on demand of our existing residents primarily, and also of the market demands.

If we are not allowed or are held up from making these changes which are governed by our existing and

potential residents, where will these people go? These changes have saved many unionized high-paying jobs in our company alone. Who will hire these employees?

Since Windsor seems to get a slap every once in a while regarding Professor Lightman, in reference to page 5, of his statements to you last week, the reference in the case of the wandering resident is a classic example of possible improper placement or the lack of standard resident care. As to the resident fraud case, this incident was strictly financial and pointed as much to a failure in a provincial-municipal program to properly monitor GWA funding. In neither of these incidents would this legislation have helped.

My personal recommendation is, again, from an operator. I didn't go to my head office or anywhere else. I'm giving you how I operate my facility and how I believe that if we all operated this way, we wouldn't be sitting here today. I believe there should be a residential home III, as certified by the local or district health department, that would have the following:

- (1) Registered nursing staff 24 hours per day.
- (2) Written and approved standards of care for residents.
- (3) Continuing records of resident condition and medication records.
- (4) Resident admission standards that bar the admission of extended care qualified persons.
- (5) A medical advisory council made up of a doctor, pharmacist, manager-owner, director of nursing or registered staff, meeting at least four times a year to review resident care and condition.

Ladies and gentlemen, we are in the care business, whether anyone wants to admit it or not, and having the Housing ministry make decisions regarding our residents' condition is like having a brain surgeon fix your car.

Mr Owens: I want to thank you for your presentation and to ask you, on my consent theme today, in terms of your comments on page 2 of your brief, why would you think this legislation would prevent somebody, with their consent, from being moved to an assisted-living floor? Why would this legislation prevent that move from taking place?

Mr Anderson: With their consent. In a lot of residential homes like ours, if you compare our facility to an extended care facility, the differences are dramatic. Not one of my residents who has ever had to go on to a nursing home, or even chronic care when they were almost bedridden, ever wanted to leave any more than they ever wanted to leave their own home.

I'm only covered for a certain amount of nursing, I'm not a nursing home. Even with a Nursing Homes Act that thick you're going to have incidents. I don't want any more incidents than I can afford now. I've had none in 10 years because I've been able to move people on to the proper care level. That's why we have homes for the aged; that's why we have nursing homes.

1410

Mr Owens: That's right. I guess that's why I'm having some difficulty in terms of understanding why this

piece of legislation will make that difficult, particularly with what could be viewed as companion pieces of legislation with respect to the Substitute Decisions Act that allows for the power of attorney for personal care so that the individual, while a person is deemed to have capacity, could make that decision with respect to his or her care and, also, if that person is deemed to not have capacity, that the person charged with their care could make that decision. I'm not sure how this—

Mr Anderson: Even residents who are fully aware who physically have reached a state where we can no longer care for them, if they say, "No, I do not want to move," in Windsor I have bylaws that they have to be moved or I'm retained and fined for not moving them.

I imagine this law will override them, but it doesn't get past the point that many of these people do not want to move on to a higher care level. There are many nursing homes that already accuse us of trying to retain these people who should properly be in their care. I'm one who does not believe we should retain people who have reached the extended care state.

The most aware resident in the world can go to a nursing home and come back and say, "There's no way I want to go there," even if they're in a wheelchair. They don't want to go any more than a lot of them ever wanted to come to my facility. They would rather have died in their own home, where we all would. So it was a traumatic move for them to even come to my facility the way it is. They think that's going to be their last move. When they have to face moving on to an extended care or chronic care hospital, it is even more devastating, especially when they're aware.

I have no problem with people who are not aware because, as you say, the mechanisms are there, the family is there or the trustee is there. It's my aware residents. We work with them. We don't push them out in a week, or two weeks, or three weeks, or six weeks. We work with them as long as we can to make it as easy a transition as possible.

Mr Owens: My line of questioning is certainly not meant to disregard the human side of this issue because, as you've indicated, we all realize that at certain points of our life—even now, at this stage, I don't particularly want to be moved around any more than I have to. My concern is that what your presentation indicates to me is that my perception is that you're saying that this bill, Bill 120, is going to make it extremely difficult, if not impossible, for you to do that. I'm suggesting that's probably not a correct perception.

Mr Anderson: It's difficult, and I think you'll admit the time element using the facilities in this legislation is going to be far longer. The average stay in my facility is a year and a half to two years. A resident could deteriorate in 24 to 48 to 72 hours. There are nursing home vacancies in this city that are awaiting residents for their beds. If a process is dragged on where both the family and the resident are resistant to moving, regardless of the care level, that person could be in jeopardy.

Mr Owens: Yes. I don't mean to be difficult about this, but if the person is at that level where he or she requires that kind of care, then we move into a whole

different avenue of legislation—

Mr Anderson: That's right.

Mr Owens: —and probably an acute care hospital for a period of time. In terms of the issues with respect to levels of care at the time of discharge, the secondary process kicks in with respect to the long-term care process.

Mr Anderson: But right now hospitals don't retain them. They bounce them back to me regardless of their care level because of the general state of our department of health right now. I get ladies or gentlemen back who we should not readmit but who have nowhere else to go. The ambulance is almost turned around in the emergency room and they're sent back.

Even Professor Lightman—you know, there are many parts of his report that I agree with—recommended a fast-track system for this. It hasn't been dealt with. If you can say to me it's going to be dealt with in your amendments or recommendations—that's why I put it in there. On page 11 he said, "The absence of fast-track: Lightman has accepted the minister's explanation of why the recommendation for fast-track was not included in the bill: because of technicalities. He's receiving questions or other approaches." My question is, is this going to be in time before this is enacted? Are we going to have that fast-track system in place?

I feel sorry for someone in the Housing ministry coming in because a resident has called and said, "These people are trying to move me out." Is he going to come in and decide whether this resident is beyond, or is the health department? I'm inspected by the health department three times a year. A nurse comes in and reviews all my records, as our bylaws locally demand. Now I'm going to have the Housing ministry coming in questioning whether the doctor, the placement, the VON or the health nurse says this person is ready to go but he or she doesn't want to go?

Mr Daigeler: First of all, could you tell me how long the Windsor home has existed?

Mr Anderson: Since 1972, our Central Park Lodge.

Mr Daigeler: It is a lodge then.

Mr Anderson: Yes, a residential home—retirement home, rest home.

Mr Daigeler: It's so difficult to—

Mr Anderson: I know. That's the problem with the legislation. We have 24-hour registered nursing staff in our facility. Fifty per cent of our residents are given medication by registered nursing staff with their med certificate. There are different levels in lodging homes, and our level is very high. Our costs are 75% to 80% for nurses, food, care of our residents. We have 71 employees. Twenty per cent is rent and we'll fall under this, but it's many of the landlord-tenant parts that, unless they are adjusted, are going to give us major heartache.

I feel for the lodging homes or the boarding homes. They need more of this than we do. We're already set up in a system where we care for our residents. But we also have medical needs.

Mr Daigeler: This is the difficult part. In my riding

I have residential care facilities which don't seem to have quite as much care as you have; however, they also do.

Mr Anderson: I think they all should have.

Mr Daigeler: Be that as it may, you said in your brief, "If we are not allowed or are held up from making these changes," and you were referring to changes in the assisted-living floor—

Mr Anderson: Within the facility, renovations.

Mr Daigeler: Right. Why do you think this particular bill would prevent you from going ahead with such changes?

Mr Anderson: Parts of the bill bar you from making major changes or renovations without going through the whole municipal system. Right now, I go to the municipality to get a licence to make a change within my facility. I don't go through the whole process that we're going to an assisted-living floor because my residents are deteriorating and they need more care.

I go there to get the licence to move this wall, open this up, put in a bathroom, put in a dining room, put in elevated toilets, and it's done. I start to work within 30 days. That's how fast my residents can deteriorate. A year ago I'd be sitting here saying I don't have an assisted-living floor. Now I've got an assisted-living floor with 21 residents on it.

The same with discharging of residents: If it's dragged out, most of these residents will expire before you've reached the end of the process.

Mr Daigeler: Perhaps the parliamentary assistant or somebody from the ministry could enlighten me whether in fact there are provisions in the bill that would make these requirements that you have to go through all kinds of different hoops. I just am not familiar with them.

Mr Anderson: I'm not sure if it's the planning or the other—I've read the bill through—where you have to go to the municipalities to apply to make major renovations. Not small renovations, major renovations.

I've only done that twice in 10 years. It's not something you do yearly. But if two residents in my building said, "We don't want you to have an assisted-living floor, those people should be out of here anyway," and they objected to it, I'd have a major problem.

1420

Mr Daigeler: Earlier in the day we heard some very critical comments about—and I'm using the words "home operators," because I'm not quite sure what homes were included in these categories. It was said that policies in these facilities tend to be determined and based on the interests of the operators rather than the residents.

I'm not sure whether the one who said that was applying that to you as well; I'm not quite clear. But perhaps you could tell me, what is the system in your home to respect the rights of the residents and what the priorities, according to your vision, are in your facility and, if you can, also comment from your experience on whether your situation is the same in other homes in the Windsor area or whether there is a problem or not.

Mr Anderson: In our facility, all of our rooms are private. The residents can bring their own furniture. We

can provide part of the furniture. They all have a locked door. It's much like an apartment building. We have a full-service dining room. We have a full-service nurse's office. We have a hairdresser and barbershop. We have a Windsor Arms bar.

Mr Daigeler: How do you make decisions, though? Do you have a residents' council?

Mr Anderson: A residents' council and a medical advisory group. We're inspected monthly by the health department, the kitchen, the bedroom areas. Every four months we're inspected by the health nurse. We have monthly resident meetings; the residents' council has its input into it.

Our business is competitive. I operate on my residents. The assisted-living floor wasn't set up to bring people in from the outside. There's no one on that floor who was admitted at that level of care. It was for the residents who have been there eight, five, four, three, two years or one year. So many of the things we've done within the building were at the demand of the residents.

No, not all facilities operate the same. Not all facilities, in fact probably less than the majority, have 24-hour registered staff. They should have if they're caring for people at my level. Not all people have medical advisory. We're required to. Now, all people in Windsor should be inspected, because that's a local bylaw. Not all people have resident councils. I'm not saying there are not problems in the area, but this type of legislation isn't going to help facilities. Actually, it's going to hinder.

Security of tenure to an unscrupulous operator is a godsend, because to everyone who objects, he says, "Great, I'll keep you." Right now, occupancy is the name of the game around here because we're overbedded. So for them it's going to be great because of security of tenure: "He said he didn't want to move." It didn't matter whether he was in bed with bedsores, he didn't want to move. So they get to keep him. That's not the system I want to be part of.

Mr David Johnson: I'm familiar with the Central Park Lodge in East York on William Morgan Drive. Would your facility be somewhat similar?

Mr Anderson: We all think ours is better than the others, even in the system.

Mr David Johnson: It's hard to imagine, because—

Mr Anderson: That's Pearl LeMandel. Oh, yes, Pearl runs first-class facilities.

Mr David Johnson: It's a tremendous facility. You've made a comment that many people don't want to move. I can understand, from a facility like that, that people would not want to move. It's not only the care and the independence, but the programs that are run, recreation programs, that sort of thing, social programs, which are tremendously impressive.

I just wanted to make sure I understood your recommendation. I'm looking at the last page of your brief, and your recommendation is that an exemption should be made. You're saying an exemption from the Landlord and Tenant Act?

Mr Anderson: The parts that I've addressed. If

facilities operate with a residents' council—nurses are professional people, so I feel that if you have 24-hour-a-day registered staff, you have a residents' council, and you keep proper records for assessment, they should be exempt, not unlike you've exempted nursing homes, homes for the aged, hospitals, institutions. We have many of the same rules. In fact, our care probably is at the level of nursing home care or better in some cases and they're exempt.

Mr David Johnson: I wondered because, to tell you the truth, I was never sure if Central Park Lodge was an extended care facility, or the level of service. Just so I understand again the exemption that you're suggesting, if certain conditions are met, then the exemption should be from Bill 120. Is that what you're saying?

Mr Anderson: Right.

Mr David Johnson: So Bill 120 should not apply to any facilities.

Mr Anderson: There are different levels. This covers a properly run facility. But Bill 120 has thrown us all in a hopper together and made no definition of the hard work our company has done to try to provide what you see at William Morgan or in Windsor.

Mr David Johnson: Other operators who have approached us have asked for an exemption from the Landlord and Tenant Act. I think it's their perception that it's the Landlord and Tenant Act that is causing the problems with regard to eviction. "Eviction" is a strong word.

Mr Anderson: Bill 120. Like I said at the first, the exemption I'm looking for is under the landlord and tenant provisions. The rent control part, as far as controlling rates and rent and notification, we've always given 90 days and we've only raised it once a year. Last year it was 1%.

Mr David Johnson: So you're looking for an exemption from the landlord and tenant portion of Bill 120?

Mr Anderson: Right.

Mr David Johnson: I've heard it said from some deputants and perhaps some members of the government that this is a problem that doesn't occur very often. The problem we're talking about is where a resident exceeds in care needs what the operator can provide. "This hardly ever happens. We're making a mountain out of a mole hill. Somehow it'll be handled. Don't worry about it."

Mr Anderson: It happens a lot.

Mr David Johnson: Can you give us any description of it?

Mr Anderson: I can't give you direct examples, but I know many operators who admit or retain nursing home people or extended-care-qualified people who should never be retained in facilities like ours. They don't even have 24-hour nurses. It happens across the province.

The examples that are thrown out here, you see more examples from all the deaths in London at the nursing home or extended care facility caused by salmonella poisoning. A book that thick isn't going to stop the odd incident. It didn't stop that incident. But there are many, many extended care people being retained in residential

homes as far as I'm concerned.

Mr David Johnson: Today, if there's a person who's in that category, there would be a discussion between yourself as the operator, obviously the individual, perhaps the relatives of the individual, I don't know, and—

Mr Anderson: The family doctor could be involved, VON placement. If they're in the hospital right now, the hospital will call us and say: "Jim" or "Mrs Laramie"—my director of nursing usually—"this person is to the point where it's taking two people to walk her. We really believe she should be"—at one time it was called papered—"papered for a nursing home." That's the system. If they assess her to be nursing home level, under the bylaws in this city, we do it. We cannot readmit her.

Mr David Johnson: So there's a gentle persuasion to move that person to where he or she would be properly—

Mr Anderson: I've never had a problem with families talking to them. The resident still, at the end of the day, does not want to go and goes out with tears in her eyes, along with my staff, but at the end of the day I think they believe or we've convinced them that this is for their good, that we really can't take care of them like we should.

The Chair: Thank you for appearing. We appreciate your comments.

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M. M. DILLON LTD

Mr Tiziano Zaghi: Good afternoon. I would like to thank the committee and the Chairperson for allowing me this opportunity to speak. A brief introduction: My name's Tiziano Zaghi. I'm a senior planner with M. M. Dillon in its Windsor office.

A bit of background: I've been planning in Windsor for about the last seven years. I grew up in Windsor and I'm very familiar with the community. I've had extensive involvement in the housing industry, both in the private sector and the public sector, throughout the last six or seven years in the Windsor area.

I'd state right from the start that I'll keep to the outline of the brief that I've provided you, but I definitely won't go word by word. I'll try to keep very brief.

In principle, I am in agreement with and fully support the need for residential intensification by allowing the additional residential units in houses and encouraging the development of garden suites, as outlined in Bill 120. My concern that I wish to speak to you about today, although I have that support in principle, is how Bill 120 proposes to implement the provisions for allowing this form of intensification to occur in municipalities.

The two areas in particular that I wish to speak to, seeing that I'm a planner, deal specifically with the issues that deal with the Planning Act which, under the scope of Bill 120, is basically the ability for home owners to have an apartment in their house without municipal approval and, secondly, to facilitate the creation of garden suites.

The other key element that's found inside of Bill 120 is the restrictions placed on municipalities dealing with the provisions of additional residential units, that they cannot be regulated through the municipality's official

plan and also zoning bylaw. I believe that's not necessarily in the best interests of a municipality and its residents when you're looking at intensification. The possibility of development occurring in a haphazard manner without proper planning consideration and controls can certainly exacerbate problems that exist today in residential neighbourhoods.

The removal of these controls, such as the official plan and zoning bylaw—again I believe they are controls that have proved to be effective in handling housing issues and particularly with the recent provincial policy statement, Land Use Planning for Housing. A set of guidelines was developed through that document that has been incorporated by most of the municipalities in Essex county or is in the process of being incorporated through housing guidelines and policies.

Three of the key elements that policy statement introduced in reviewing these items were basically: demand—identifying demand for units; physical services—the availability of services; and capacity for intensification.

One of the major weaknesses of Bill 120, as a planner, that I can see, is that the bill itself, although it is very positive, encouraging this form of intensification, really doesn't look at any analysis on those three issues of demand, physical services and capacity for intensification, both for urban municipalities like the city of Windsor and the many rural municipalities that occur in the county of Essex.

I just briefly want to outline some of the potential conflicts that, as a planner, I could see happening if forms of intensification like this are given as a right. One is demand and supply. Presently, as a planner and having reviewed many of the background reports and the housing statements that have been completed in the last few years, there has been no indication that I've seen that there's any knowledge of what the demand and supply are, especially for units to be located in an existing home within the city of Windsor and the county of Essex.

Without those numbers, although I've heard estimates being provided, it's very difficult to determine what overall impact that will have on residential communities. That is one of the key bases in developing housing policies to incorporate provincial, as well as municipal, standards.

The other issue that comes forward is the issue of servicing. In developing and especially in residential areas that are older residential that have existing residential neighbourhoods, it's very important in many cases to ensure that there's proper servicing. By servicing, we're looking at sanitary sewers, water capacity, storm water drainage, as well as other services, such as parking and things of that nature. There are many examples in the city of Windsor which have been studied through the housing statement which identified areas that would be problem areas that could be exacerbated because of increased units being introduced to the area.

As an example, there have been problems around the University of Windsor. There are areas that are older subdivisions that have been designed—one's called the Villages of Riverside, if you're aware of it, in the city of

Windsor, that has a very high density. When it was designed, it was sort of a zero lot line. In my opinion, because of various changes that occurred through the process in developing that subdivision, it's become very cramped and lacks services. If people, for income and other purposes, are allowed to have an additional unit in that area, there could be some very strong problems, not only for servicing but also for a lot of the amenities such as parks, transit use and other social services that are usually supplied to residential areas, of overtaxing those types of services.

There are other areas in the county which have a more rural nature that have extreme problems with sanitary sewer capacity and water capacities. They're set up to be at very low standards, and if intensification is allowed to occur in some of these areas without the necessary controls, it could further exacerbate areas that are problem areas already in that particular involvement.

The other issue is, having been involved in introducing in a lot of areas in the Windsor region and in the county the notion of affordable housing, I could tell you through experience at public meetings that it was quite a battle, especially three, four years ago. The notion in Windsor of a town home is still generally regarded as a housing form that's not acceptable, that it's for some reason substandard and it has all kinds of connotations. So that's what we're working with in the Windsor area.

Through public consultation in dealing with the official plans, zoning bylaw changes and also in introducing the provincial housing policy and housing statements, we have made great inroads in addressing housing issues and bringing people up to speed on what housing's all about. I think a lot of that is because of the planning process and public involvement. One of the fears I have is that after going through that process with many of the neighbourhoods they're sensitized to the many, many issues associated with housing, servicing, transit, all those types of things. Now, introducing out of the blue, all of a sudden people can find out that: "Hey, what's happening to our parking spaces? Where are these other homes coming from?" They're wondering what happened to the process, and I think part of this process was not only supplying a need and a demand but getting ownership of existing neighbourhoods to understand what it's all about.

The way I read Bill 120, without the planning process in place, which is well established inside the Planning Act, I fear that you're going to alienate a lot of neighbourhoods and send us back five, 10 years before the housing policy came forward. I think that's going to be very detrimental in getting ownership. It's going to be a very hard sell.

In closing, I just have two brief recommendations. As I said, I'm in full support of both the garden suites and also allowing people to have an additional unit in their home, subject to the idea that it be done in a comprehensive manner, very much as the housing policy statements were set up. Because of that, I think the mechanism is in place within existing housing policy statements, policies, official plans and secondary plans and zoning to facilitate these types of uses and encourage public participation at the same time.

So rather than having a carte blanche to allow development to occur wherever, especially when municipalities don't know how strong the need is and what the existing units are in their own municipality, I think that process is warranted.

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Secondly, I haven't talked much about garden suites. I think they're a great concept. Originally, in reading through some of the earlier reports, garden suites were identified for seniors and also handicapped persons. Reading through Bill 120 itself I don't see any reference to that, so I'm not sure if it's open to anybody. Regardless, I think it's a great process, but there are problems with servicing and site and acceptance and compatibility with uses.

One way of identifying that even a step further, because you're dealing with a much larger structure than having it in an existing home and changing the internal structure, is to have that go through the site plan control process, which is again a very well recognized planning process under the Planning Act. Municipalities are aware of it, the public is aware of it and they also get informed when there are changes in their neighbourhoods.

In closing, I just wish again to thank the standing committee for giving me this opportunity to speak here this afternoon. In particular, I'd like to thank them for coming down to Windsor. It saved a lot of travelling to London or Chatham or those other fine municipalities that we often have to go to.

Mr Lessard: I heard the weather was nice here.

Mr Zaghi: The biggest challenge was walking from the sidewalk to the car.

Mr Owens: So there isn't a parking problem in this city.

Mr Zaghi: Not until the casino opens up, but we're taking care of that too.

Mr Grandmaitre: Talking about parking, we've been told there are no parking problems in Windsor. As a planner, would you agree with these people?

Mr Zaghi: I think you have to look at specific areas with respect to parking problems. Two of the areas that I mentioned—our firm was involved by the university to do a parking study. There have been incredible problems for the five or six blocks surrounding the university, to the point where the Windsor transportation department has gone out I think for the first time and actually given, as Toronto does—if you're a neighbour you've got a parking space on the street.

That problem has actually been exacerbated—you can go to Western, anywhere near universities where homes have now been chopped up into eight, 10 units, which we're trying to control I think through this legislation, and as much as you think, students own cars and most of the students who live there are from out of town. So you've got that exacerbation. If you go out there, there's absolutely nowhere to park, so the university's now looking at purchasing property, tearing down houses to build parking garages.

The other area is that zero lot line development which is called the Villages of Riverside. It's been set up in

such a maze that there's virtually no place to park except for one car on the driveway and there are sort of shared driveway areas. If, let's say, 20% of the homes or 10% of the homes had an extra unit in them, without some form of control to say, "Well, we can improve parking by putting some visitor parking here or somewhere down there," you would just absolutely have cars all over public rights of way. So there are two examples.

Mr Grandmaître: If I may, I'll go back to the Land Use Planning for Housing, which the city of Windsor respected back in 1989. It's been reflected in their zoning bylaw and also the official plan. Also, like so many other people, you agree with the intensification program of the government but you feel that Bill 120 will not create the number of additional units that this government is trying to create. Is this the message?

Mr Zaghi: I don't think that's my message. I really don't know. My brother lives in Toronto. I have a lot of friends in Toronto. I could see millions of units in Toronto being like that because it's a totally different urban environment.

Mr Grandmaître: I'm talking about Windsor.

Mr Zaghi: But in Windsor I have not seen any statistics, and we're involved in putting the housing statistics together.

At that time, when that was done in 1989, it was very difficult to quantify who had basement apartments and other units that were in there. I don't know if the demand's 1,000 units or 20,000 units or 20. If you look at the statistics, the areas that have had intensification, where they've had homes that have been broken into two or three units legally through the city, I think in the years of 1989, or 1991 or 1992 or something like that, in a two-year period the city had 54 applications for that and something like 51 of them were in the downtown area. To me, those are not big, big numbers.

Mr Grandmaître: This is what I'm getting at.

Mr Zaghi: But I'm not sure, because I've attended other meetings—one meeting at council somebody mentioned that there were about 25,000 units in the city of Windsor.

Mr Grandmaître: We've heard this.

Mr Winninger: It's going down.

Mr Zaghi: That's what I was trying to explain, supply and demand. With the housing study that was done, we knew how many single families, apartments, condominiums, and what the price ranges were. There's been no attempt to collect that data and it may even be very difficult to collect that data if they're illegal. You can't follow it through permits. You'd have to be fairly creative to identify that. But to open it up throughout the province, especially some of the rural areas, you don't know what's going to happen out there.

Mr Grandmaître: Basically what you're saying is Bill 120 or basement apartments are not necessarily your piece of legislation for Windsor or your choice for Windsor.

Mr Zaghi: I think it has to be site-specific, as the housing policy was. Windsor's very fortunate. They have

a very high percentage of affordable housing. They've always met their 25% criteria. In other municipalities it's more difficult. It's very site-specific.

I can take you out to St Clair Beach, which is a 15-minute drive, and it's attached to Windsor, and it's a whole new ball game. As the housing policy recognizes, you have to do it in a comprehensive manner. This is only one component of housing. It has to be built in. What impact it has on other forms of affordable housing, I don't know.

Mr Grandmaître: Yes, and you don't need this kind of legislation to appear in an omnibus bill. It could be done through the housing policy.

Mr Zaghi: I think it could be done as the housing policy was done.

Mr David Johnson: You raised one interesting point that I guess is pretty obvious after you stated it. It was pretty obvious to me but I hadn't thought of it before, that essentially, there's a lot of trust involved in planning between the communities, between the council and between the people who live in a community, and people certainly have a right or expect that planning is going to have some substance to it and they're going to be involved in it. That's the process we have here in the province of Ontario.

When you mentioned that this might set it back four or five years, I think you said, in terms of gaining acceptance for town houses, it sort of brought me back to some of my own experiences in East York where I was the mayor. I'm not so sure that people there are opposed to town houses, but there certainly is a reluctance to accept certain forms of housing, housing that I suspect 20 years from now people will say, "What was all the fuss about?" kind of thing, but still there's an education process and there's a trust that has to be developed. People have to become familiar with it and aware of it, and that's I guess what you're doing and other planners are doing.

If you cut that trust somehow and override the process and plunk something upon people, then I think what you're saying is that that could actually make people dig their heels in. If we're talking affordable housing, for example, it may make it more difficult for the province or municipalities to have affordable housing accepted in the future. They say: "Why should I believe you? Look what happened last time?" Is that what you're getting at?

Mr Zaghi: Yes, that's right on the point. It's been quite a struggle for not only the city of Windsor but the rural municipalities and some of the towns and villages in the area, and it's not over. We're continually fighting, but residents, like I said, are very sensitized to all these issues now. It's really ingrained. Windsor generally, if you look at other municipalities, still people come here and they're surprised how low the density is. There are areas I work in where the servicing capacity for sewers is 10 people per acre. That's like four homes an acre.

If you have those areas and you have the opportunity to put in one unit in the basement and perhaps a granny flat, you've doubled that and where are you at with the capacity? Everybody realizes intensification, towns now are running out of space. The town of Tecumseh, they're

going to be building up, so it's a gradual process. If people aren't informed, they're going to entrench and then you've got real difficulties. You've got provincial problems and also municipal problems right down at the maintenance scale.

Mr Arnott: Your brief is excellent. I wanted to start off that way and compliment you.

If you had to guess, would you assume that there'll be an increase in the overall number of basement apartments, assuming this bill goes through?

Mr Zaghi: I've had some discussions with people. I imagine there would be an increase in basement apartments. The point of interest was that the tenant who has lived in a terrible basement apartment, who would love to complain because he doesn't have water or facilities that everybody has, now would have an opportunity to have that corrected.

1450

The other thing that could happen because of that: A lot of the basement apartments are there because they are lower in cost or there is no other capacity anywhere else to house people. If the costs are then built up, do they start competing with some of the more co-op housing and other forms of housing and then people will say, "Well, why should I live in a room somewhere with a little kitchen and things like that when I can go to the Windsor housing authority or there may be other apartments that are more suitable?" So there's probably some point where the price will go up and then demand and supply will even out, and then you'll get shifting into other areas.

So it will be interesting. Some people, I'm sure, will simply say, "I'm not going to spend \$15,000 on my house to upgrade plumbing, electrical and that," and you can see a lot of units just going out because they're saying: "Well, I'm collecting \$300 a month," or something. "That's add up so much, but I'm not going to pay \$15,000 out, cash." Especially if more units come out, then these guys—a lot of people just go to them because there's nothing else. So what you'll find is there will be a gradual oversupply perhaps and people will then cut back. I think it really depends on what the demand is in the community, and we don't know that right now.

Mr Arnott: Wouldn't it have been wise, if the government wanted to do this, to do some sort of a study, commission some sort of a study to realize what the impact was going to be?

Mr Zaghi: That's exactly what happened with the housing policy. Every community, whether small—some had to do it immediately, like Windsor, because they are identified as a key area. Small and large, I think in any planning process that's the whole basis, to base a decision on information, data that's available, and then see what the impacts pro and against are and balance it with the rest of the neighbourhood.

Mr Arnott: Of course, that wasn't done in this case. In the constituency that I represent, Wellington county, the municipal officials I talked to tell me there are going to be significant problems, especially in the small towns. I think of the town of Mount Forest, which recently undertook some steps to upgrade its existing sewage

treatment plant and on that basis was given tentative approval by the Ministry of Environment to have approximately 100 additional residential sewage units to allow for some moderate growth in the town over the next 10 years, a town of 4,000 people. What impact will this bill have on them, assuming an increase in the number of basement apartments for those 100 units, which otherwise would have sufficed for all the growth needs in the town? I'm sure there are examples in Essex county that are very similar.

Mr Zaghi: Like I said, I'm in support of that and I think there are great opportunities for it in every municipality. Just like when the housing policy came out and the whole issue of affordability—I mean, people just groaned and moaned. Of course there were deficiencies in it. There will always be deficiencies in any legislation. Policy can't cover everything, but it gave a framework with criteria to follow. So you grew with it, not only people who have to implement it, but people it affected or might affect. That's the problem here. It's not the intent of the policy; it's just that I think the mechanism is weak.

Mr Lessard: Thank you very much, Mr Zaghi, for appearing before the committee. I understand the arguments that you're putting forward here today. In many cases, they're similar to the ones that were put forward as well by the housing advisory committee. I'm sure you must be aware of the work that they do because of the similarities, and I think that you probably were involved with them at some point.

One of the problems that we see as legislators is that even though there's support for the Land Use Planning for Housing guidelines—and you referred to the three issues: demand, physical services and capacity for intensification—the map that we received from the housing advisory committee indicates that there is only a very small segment of the city of Windsor that converted dwellings would be permitted and that included the downtown area, the area where the density is the highest and the income is the lowest.

You mentioned the University of Windsor and the Villages of Riverside as specific areas where further intensification may be a problem. But there's huge areas of the city that are excluded from intensification, notwithstanding they may meet those three criteria that you've indicated. The only reason that they're not included as far as permitting converted dwellings is because of the complaints from the public, because they have some fears about what they think might happen to their neighbourhoods.

They seem as though they're areas where—well, the demand may not be high but the physical services and the capacity are certainly there.

We're not going to see that intensification take place in areas where it should if we continue to follow the Land Use Planning for Housing. I wonder how you respond to that.

Mr Zaghi: I agree that there are areas in the city of Windsor that for political reasons or whatever have been strictly single family. Perhaps they're higher income, you know, south Windsor, the Riverside areas, that have not

been identified. I don't know if the housing study at the time looked at the type of detail with this particular legislation with respect to allowing units to locate, especially with the garden suites. Because there may be opportunities in areas where you've got larger single-family homes that you may have elderly people or handicapped people, that it may be acceptable to them, now that they're—but I'm sure they don't even know what garden suites are—to say that "That would be great to put in our neighbourhood."

All I can say is it's going to take work probably, because of the past history of those areas, to introduce that type of stuff, that type of units.

To give you an example, I was recently involved in the last couple of years in putting town home units in south Windsor. That was a huge struggle, to put in some town homes. They were even upper-end town homes. But, once they were put in, people there saw that: "I want to live in the area, I grew up in the area, and I had my big 3,000- or 2,000-square-foot house with the big yard. But I'm reaching retirement age now. Great. I can stay in my community now." And they're selling very well.

It took maybe eight years to get some town homes out there. Now you see them, now there's a market for them all of a sudden. And people are very careful about saying, "Oh, I don't want town homes because they're going to depreciate my property value," and all that stuff because they know it doesn't happen because now there's physical examples. We take them out to the site and see.

I think that's changed with affordable housing too. We're working on St Joseph's project now, which is giving a totally different look.

I agree, the first town homes people saw were boxes. This is affordable housing. And it's taken time to get beyond that. I agree, Wayne, that it'll be a tough struggle because it's very politically involved when you're dealing with people. We planners can put all the nice numbers up there, but you're dealing with people and they're the people who live in the community.

But, unless you start that process of getting ownership and saying, "Here's the benefits for you"—it may come in five or six years. It may take 10 years, it may take two years. But unless you start it in the right direction, by having public participation, of letting them know what they are, of showing them examples where they've had them properly, so that they're compatible with the area, then you can start changing them around.

But to say that "Boom," we're going to plop them in there, and heaven knows what's going to go in there because people are uninformed and they may not have the type of controls that they want, then you're in a real battle.

In a sense you're right, that there's some areas in the Windsor plan that have been left open, perhaps for political reasons or other reasons, but I think with this bill here, and these particular uses, they can be reintroduced at a level that can gain acceptance. I think that's a fairly big difference.

1500

Mr Gary Wilson: Thanks for your presentation. I just

want to clarify a couple of things. In spite of the politicians on the opposition side, who are the hardest people to get along with—you mentioned about the difficulty in getting along with people—I want to say that we had a lot of consultation. It didn't come, perhaps as you put it, "Boom, out of nowhere," but there's a been long history to try to legalize these accessory apartments. We certainly have accommodated some of those concerns. For instance, in Mr Arnott's area, unless there are municipal septic systems, then there's no requirement to put in second apartments.

But parking too needs to be clarified. Again, there are limits put on what we're requiring, that municipalities can require two parking spots where a second apartment is requested. Unless that can be accommodated, that would deny that place.

At the same time we're hearing that in other areas of the city there's no transportation, yet it would appear that if cars are available and can't be put in one area, then certainly that would seem to mean that other areas of the city could then accommodate second apartments where people would have the cars so that they could get out there. It seems to be a very balanced approach to what we're trying to do here, again, to give the home owner the right to put in a second apartment if it suits their needs. As I said, I wanted to clarify those two issues.

On the garden suites, the legislation does lay out that the municipality has complete control over the shape of the structure, the circumstances. It's in the bill, in section 47, where it says "the installation, maintenance and removal of the garden suite" is done in consultation with the municipality so it does suit the needs of the municipality.

Mr Zaghi: On that process, there are times when you're installing a new building, depending on the size of the rear yard and how much area you have, that it could cause considerable impact on the property next door. But also there are engineering things which the engineers indicate—and I've done enough subdivisions—things like rear-yard drainage, for instance, especially in older parts of the city, where if you cover the rear yard with the building, unless there are fairly strict controls on how that's done and where the drainage's going to go, then you've got the problem of water flowing off into other properties, some to the sewers, or it could surcharge because of drainage problems in Windsor and things like that.

Rather than having an agreement and creating another level, like a legal agreement, whatever form it takes with the city and the property owner, as I was mentioning, that type of detail is taken care of quite well through site plan control and the site plan process. The city of Windsor, for instance, leaves out the political element, because now it's gone to a system where it basically has the administration—the planners, the traffic engineers, the engineers—handling that.

What that does also is it allows people in the immediate area to be notified that it's occurring, because a lot of times people in the area provide input that provides a balance in there. I would feel more comfortable that the existing system be incorporated, because then that gives

you a very clear indication of all the elements that go in when you review a site, including any type of new development.

The Chair: Thank you for appearing today. We appreciate your presentation.

D'ARCY GOODFELLOW

The Chair: The next presentation is D'Arcy Goodfellow. Good afternoon, Mr Goodfellow. The committee has allocated 15 minutes for your presentation. You may begin when you're ready.

Mr D'Arcy J. Goodfellow: Thank you. I'm basically here to speak on behalf of tenants who live in residential units and receive support care 24 hours a day.

Currently in Ontario many residential rental units are exempt under certain sections of the Landlord and Tenant Act. This has caused a great many problems for the tenants living in these units. The landlords claim they do not have to comply with certain sections of the Rent Control Act and the Landlord and Tenant Act because of an exemption under subclause 1(c)(ix) of the Landlord and Tenant Act. I feel that royal assent of Bill 120 is necessary for people living in supported-service living units. It will give them all the rights that people in normal rental units are afforded at this time.

I'm a quadriplegic. I live with my wife, who is not disabled, in an SSLU. This SSLU provides 24-hour non-medical care. We are exempt. We have problems because the landlord claims exemption under clause 1(c)(ix) of the Landlord and Tenant Act. If we have a dispute with the landlord over something, there's nowhere we can go. The proper channel, as they claim, is to go to the staff that are working. If that does not help, go to the administration. If that does not help, go to the board of directors. It goes no further than that. We are then forced to go to ministries that are regulating such units. Other tenants in the apartment building have the same problem, as do tenants across the province.

An example would be a recent incident concerning a problem we've had with our stove. We have reported for the last two or three years that the stove has been giving off electrical shocks. Administrative staff have come in to examine the unit. We have been told that we are imagining it, that we are the only ones complaining of the problem. Recently, in the last two or three months, the stove has just been shutting off the circuit breaker, killing the power to not only the stove but our oven as well. We're forced to use a toaster oven or our microwave if we want to cook meals.

A member of the staff has come in to examine the unit. This person then went to administration, had someone from the administration come down and examine the unit, went to their superior, who decided to call in an electrician. The electrician made a recommendation that the stove was so old that it needed replacement; it would be too costly to repair. An electrician prior to this who did not examine the stove claimed the problem was due to static electricity. I have a computer system in my apartment; if it was static electricity, the computer would have shut down long before the stove.

We have recently had to call Ontario Hydro to get an

inspection done on this stove. They recommended that the stove be totally replaced, and there was a tag put on the circuit breaker that it is not to be used again until it has been inspected once again by an Ontario Hydro inspector.

Last Friday, we were told by administration that a new stove that had been ordered for our apartment was no longer going to be put into our apartment; it would be put into a community kitchen. In turn, we would receive the stove out of the community kitchen. This unit is at least six to seven years old and is used by between four and six tenants every day, so we would be inheriting somebody else's problems.

Bill 120 would eliminate this sort of problem because not only would the landlord be totally compliant under the Landlord and Tenant Act; they would also have to comply with the appliance expectancy life chart which is found in the Rent Control Act. We have been told before by administration that it is not related by this act because it is rent-gear-to-income.

There are a number of residential rental units in which tenants receive assistance with daily activities in Ontario. Very few of these feel that Bill 120 is in the best interests of the tenants, as it will cause a loss of support services. They make claims it will force tenants into chronic care units and nursing homes.

The truth of the matter is that many of the tenants living in these units have come out of chronic care units, nursing homes, striving for independence. Bill 120 will help these tenants stay in the rental units they are in. The landlord will no longer be able to be a service care provider as well. Delinking the two is necessary. It has happened in several units in Ontario. As the chairperson of the Ontario March of Dimes committee for independent living, I know for a fact that there are several SSLUs in Ontario that the Ontario March of Dimes run in which it is strictly the service care provider. The landlord is a totally separate entity. This should happen in all of Ontario, not just in some units.

1510

May 1, 1992: The commission of inquiry into unregulated residential accommodation submitted its finding to the Lieutenant Governor of Ontario. As you all know, the Lightman report, also called A Community of Interests, was formed after the death of a tenant in an unregulated boarding home. The report made 148 recommendations to amendments to various acts. The acts included the Nursing Homes Act, Landlord and Tenant Act, Rent Control Act, Regulated Health Professions Act, Substitute Decisions Act and others.

As stated in the executive summary of the report, unregulated accommodation included retirement homes, boarding or rest homes and residential housing units providing care and assistance with daily activities. The apartment building in which I live falls under the latter category.

One quote that was submitted in a written paper from a Hamilton delegation stated, "We regulate cars, guns, repair shops and just about every other kind of business practice, but when it comes to the people that can least

protect and help themselves, we turn the other way."

The people referred to in this quote are vulnerable adults. According to the commission's report, vulnerable adults are those living in unregulated housing. I and my fellow tenants in the apartment building are vulnerable adults. We may have disabilities, but we are still human. We deserve the same rights and privileges as people living in normal apartment buildings. Why should we suffer just because of a disability or the fact that we are elderly and require people to provide care that we cannot provide ourselves? We didn't ask for this sort of life.

In the apartment building where I live, tenants fall under the category of vulnerable adults. The majority would like to own pets. We cannot do so because of the exemption under clause 1(c)(9) of the Landlord and Tenant Act. If we take in a pet without obtaining express written permission from the landlord, we're subject to eviction for breaching the lease. Tenants living in rental units which fall completely under the Landlord and Tenant Act can obtain a pet without the permission of the landlord. Does it matter to our landlord that medical findings have proven that animal companionship is beneficial to elderly or disabled individuals? No, it doesn't. Our landlord simply claims immunity from the Landlord and Tenant Act because of the exemption and will give no further explanation as to why you cannot own a pet.

Issues such as these should be brought to the board of directors. We have to go straight to the administration. It goes no further than that. The problem is, if things do go to the board of directors, they are held in in camera meetings. Tenants are invited to participate or attend board of directors' meetings. This is a complete joke. At these board meetings, everything that is tabled in the open meeting is deferred to the in camera meeting. Nothing is brought before the tenants so they can hear what is going on. Tenant matters dealing with specific tenants are not discussed. In a board meeting held Tuesday night which was supposed to be an open meeting to the staff and tenants of the apartment building, there was a letter from my family doctor which was sent forth to the one administrative member of the apartment building. This is a confidential matter that should not have gone to the board of directors. This matter was not discussed with myself or my wife; it was strictly discussed with the board of directors. I find a great problem with that.

Again, Bill 120 must receive royal assent. It's necessary for tenants or vulnerable adults to receive full protection under the Landlord and Tenant Act. We need and deserve these rights. Some landlords claim Bill 120 will cause an institutionalization of tenant living in SSLUs. The truth, however, is that Bill 120 will deinstitutionalize what some landlords have already done.

In closing, a quote from Dr Lightman: "A community of interests best states my feelings of the way things are being handled today....Many vulnerable adults in Ontario live in conditions we associate with Victorian England, not with late 20th-century Canada. These vulnerable adults are not being accommodated; they are being warehoused, conveniently out of sight and out of

mind....We did not set out to create a system of rental housing in which the most vulnerable members of society are the least protected; but that has certainly been the outcome."

Mr David Johnson: Could you tell us a little more about your apartment and the people who are in the apartment that you're talking about? I don't think you really had enough time to do that.

Mr Goodfellow: The apartment building I live in was named earlier as ALPHA.

Mr David Johnson: You're in ALPHA.

Mr Goodfellow: Yes.

Mr Cooper: As you understand, most people do support independent living. My question is, if you were evicted today, what would your options be? Just to let us know how vulnerable you are.

Mr Goodfellow: I cannot answer that question because of a lawsuit that is in progress right now; it is before the courts.

Mr Cooper: All right. Another person then in the same condition as you, what would their options be?

Mr Goodfellow: A nursing home or chronic-care unit.

Mr Mammoliti: What was that? I'm sorry.

The Vice-Chair: Do you want to repeat that?

Mr Cooper: A nursing home or chronic-care unit.

The Vice-Chair: That's fine. Thank you for coming.

LONDON AND AREA TENANT FEDERATION

Mr Leo Bouillon: My name is Leo Bouillon. I'm the executive director of the London and Area Tenant Federation. I'm a tenant and have been since I moved to London more than 10 years ago. I applaud the provincial government for its undertaking of Bill 120, also known as the Residents' Rights bill.

London, as it has been suggested, does not have a housing problem. The vacancy rate is high and that's true. Our city officials bury their heads in the sand and could not possibly understand the issues that tenants have. The vacancy rate is high because people cannot afford to move into these high-priced apartments.

If London doesn't need Bill 120, why is it that there is a waiting list for decent, affordable housing? It is estimated that there are over 1,000 families on waiting lists for public housing. For example, the waiting list for co-op housing is at least two to three years and one to two years for public housing. Mayor Gosnell's statement was, "Bill 120 has opened a hornet's nest over housing and rental advocates lining up with government and most civic leaders against it."

To that statement, Mayor Gosnell, I tip my hat. It's taken you all these years to realize that advocates like myself wouldn't have a job if you did yours. The federation has invited the mayor to our meetings on numerous occasions, but in his wisdom he has never attended or sent a letter. Most tenants will support the Residents' Rights Act because we are aware of the problems that tenants face. We work with it every day.

It is interesting how in London we have a different problem, not with granny flats, but with nanny flats.

These are apartments for the employees of doctors, lawyers and business executives that we're not supposed to be aware of. Tell me, Mr Gosnell, is that okay and if so, does that not constitute discrimination? Bill 120 would bring illegal apartments to justice and allow for better protection for tenants who are afraid of speaking up for fear of losing their houses.

Another example of why the provincial government needs to pass this legislation is the tragic fire in Mississauga where a mother and her three-year-old son were killed. Mayor Hazel McCallion's response was, "The more reason to scrap the province-wide legislation and leave the matter to local politicians." If Mayor McCallion had her way, she'd close every illegal apartment. Good local responsible politics.

I'm not convinced that all London home owners will rush out to build apartments in their homes as it has been suggested. As for the problem of parking, most low-income families don't have access to a car because they can't afford a vehicle.

Another reason why we support the Residents' Rights Act is the fact that care homes will be forced to abide by the Landlord and Tenant Act, Rent Control Act and the Rental Housing Protection Act which will give tenants in care protection control over the amount paid for accommodations, provide security of tenure, all this a breakthrough which is long overdue.

I could go on and on with the reasons why we support Bill 120. In closing, I must bring to your attention that it is a tenant's right to demand decent, affordable housing. We, as tenants, pay property taxes and, if I may add, tenants pay more property taxes than home owners. Does that in itself not constitute that tenants should have a say in where and how we should be housed?

1520

Mr Mammoliti: Your comments on the mayor of Mississauga are, I believe, right on. I think that she would do more than just—well, let's talk a little bit about the mayor of North York, who said yesterday, "Cockroaches in basement apartments are bigger than cockroaches in apartment buildings." Now, this is the mayor of what, the fourth-largest city in North America? Is it the fourth largest?

Mr Arnott: Not in North America.

Mr Mammoliti: In Canada for sure—who believes that cockroaches in basement apartments are bigger than cockroaches in apartment buildings.

The mentality of some of these individuals who sit on council is absolutely incredible, and to use this as an argument to squash accessory apartment legislation, in my opinion, is atrocious. Would you agree with me?

Mr Bouillon: You're asking me, right? I guess that's the reason why I've made reference to two mayors in particular, and I believe that's what is happening across the province and most municipalities will not own up to it.

For example, in London, the developers have quite a large say in what goes on in any kind of housing. Right now there's a proposal where a developer is trying to build a high-rise that would house 1,800 people.

Again, my answer to all that is right now landlords are complaining because there's a high vacancy rate. When they build these units it's not going to make it affordable, so we're back to square one. This is where I believe legislation will help tenants. Those who can least afford to move will have an opportunity to relocate in a basement apartment, granny flats, garden suites, whatever you want to call them.

Mr Mammoliti: How big are the cockroaches in London?

Mr Bouillon: They have quite a problem there.

Mr Winninger: Cockroaches in London are not solved, unlike accessory apartments.

Your presentation went by so quickly I just caught the tail end of it, Leo, but you've been working on behalf of tenants within the federation for a good two, three, four years now, I believe.

Mr Bouillon: Four years.

Mr Winninger: I imagine you'd be aware of the demand certainly for affordable housing in London.

Mr Bouillon: Yes.

Mr Winninger: You'd probably also be aware that there are very substantial waiting lists to get into public housing and also into cooperative and non-profit housing: over 1,000, I believe, on each of those lists.

Mr Bouillon: Right.

Mr Winninger: Can you fathom why it is that there are fairly substantial areas in London with large homes on large lots that are still zoned illegal for accessory apartments? Can you fathom why that might be?

Mr Bouillon: Again, the problem is that a lot of people will not open their homes because it is not legal, unfortunately. That is a good point. The family structure has changed over the years. In London, there are larger homes. Of course, the families back then were larger, where they had seven and eight members. They could certainly open their doors to having tenants to help pay their mortgages. Seniors wouldn't necessarily have to move out because a place is too large and they're on their own. I can see some definite advantages to Bill 120 as far as London is concerned.

Mr Winninger: You're no stranger to the problem with property standards and maintaining landlords' properties, I know, from personal experience, and you probably would welcome some of the changes in Bill 120 that would beef up powers of inspection. Are you aware of those?

Mr Bouillon: Yes, I am, and that's so true. Part of the problem we have in London, of course, is the fact that the property standards are not up to par. This legislation would definitely make the city own up to its own responsibilities. It is another reason why we support the bill.

Mr Winninger: You deal with the responsibility of the city. We've heard from a couple of presenters from London, notably the mayor of London and also Councilor Mary Lynn Metras, that they have a problem in north London, particularly in the university area, with absentee landlords, multiple-dwelling units and the absence of

enforcement of noise bylaws, garbage, parking, you name it. I just wonder what your view on that might be as it relates to this particular bill and the thrust of this legislation, which is to allow as-of-right accessory apartments across London.

Mr Bouillon: That may alleviate some of the problems that are in north London, with the concentration, again, of students in that particular area. Again, the reason for that is that's where most of the units are available. With Bill 120, that would certainly open up the doors to having students go elsewhere and not necessarily stay within that one region, and it would alleviate a lot of the problems. Again, most of the students stay in that area because they don't have vehicles, for one, and are restricted to that particular area. In this particular case, like I said, it would open up the door to having students relocate elsewhere.

Mr Winner: We've also heard quite considerable support for garden suites, which of course the municipalities still will retain some measure of control over with regard to installation, removal, maintenance and so on. They'll have to sign agreements.

I guess in the course of your work as president of the federation of London tenants, you probably deal with seniors as well and with their housing needs. How will this provision of garden suites and allowing a longer term, till 10 years, dovetail with their needs?

Mr Bouillon: London does have a large number of seniors who have relocated to London over the years. I think that opens up the door to improving the situation for seniors, for example, with their families. The seniors don't stay with their families because there is no accessory apartment and they still are entitled to their privacy.

Actually, I spoke to a seniors' group last week and that discussion did come up. So Bill 120 would certainly open up the doors to having families stay closer together, and also, as far as the seniors are concerned, they would probably stay closer to home. They value their privacy. That situation would certainly improve.

1530

Mr Grandmaître: As a former Minister of Municipal Affairs, I never thought I'd see the day where I'd have to defend Hazel McCallion and Mel Lastman, never in my life, because I've had my run-ins with these two, but I think it's very unfair to quote, from Mayor McCallion, one sentence of a 30-minute presentation.

What Mayor McCallion and also Mr Lastman were saying was, "Hey, give us the tools and we'll do the work." As you know, municipalities don't have the right of access or the right of entry to enforce municipal bylaws, as was mentioned previously. This is what municipalities have been asking for.

Now you're going to tell me: "Well, you were Minister of Municipal Affairs. Why didn't you give them that power back then?"

Interjections.

Mr Grandmaître: But that's another day. We had a very busy agenda and we never got around to it.

Anyway, going back to municipal enforcement, I think it's very important that if we believe in local govern-

ment—I don't think this government has any respect whatsoever for local government. We can see it in my own region of Ottawa-Carleton. They're destroying local autonomy by creating upper levels of government. I think all municipalities are asking the for right of entry so that they can enforce their property standards bylaws, and also the fire code and the building code. Don't you think that municipalities can do a better job than the provincial government, at the local level?

Mr Bouillon: I don't believe so. Otherwise, they could have done something over the years. They've had the opportunity.

Mr Grandmaître: I said that before.

Mr Bouillon: Yes. That's why I'm backing it up in a way. That's why I made reference to these statements that these city officials are just burying their heads in the sand.

Mr Grandmaître: Yes, but municipalities have been asking for this for I think 15 years, "Give us the power." I remember when not this government but the provincial government instituted a bill to create minimum housing standards right across the province of Ontario. At that time, in the days of Mr Davis, and I don't know if it goes as far back as John Robarts, municipalities were asking for more powers, but we didn't have the faith in municipal governments. I think it's about time that if we want to consult people and if we believe in people, we had better start believing in local autonomy and providing them with the tools, with the right legislation so that they can reflect your needs, but you don't seem to agree that local governments can do this.

Mr Bouillon: Like I said, they've had the opportunity over the years and have declined to do so. Bill 120 would give the municipality more powers.

Mr Grandmaître: Not a hell of a lot. How different would it be?

Mr Bouillon: It will give the inspectors an opportunity to go in and effectively search out the illegal apartments.

Mr Grandmaître: With a search warrant. Right now the Planning Act gives you that power.

Mr Bouillon: Maybe they don't know about it, then.

Mr Daigeler: I think, as so often with the current government, perhaps the intentions are quite honourable, but in the implementation it just doesn't work. Frankly, that's what I'm concerned about with this particular bill as well. As was mentioned in our hearings in Ottawa, I think the takeup of the provisions of Bill 120 is not going to be as expected. I'm afraid that because people still have to meet fire regulations, as they should, and certain health regulations, a good many of the current illegal apartments will not make that switch to legal apartments and they'll continue to be illegal. What do you think will happen to these units? In your view, what should happen to these units that will not switch over to the provisions of Bill 120?

Mr Bouillon: The municipalities, I will reiterate, will have the powers to go in and search these units. The reason we support this is that we will create better standards for the tenants who are existing in those illegal

apartments. Unfortunately, none of the tenants are protected right now, whereas this bill will certainly give those tenants an opportunity for better lodging.

Mr David Johnson: Since we're quoting Hazel McCallion, one other quote she made is that she would outlast, in office, the Minister of Housing and that she didn't need anybody's help to achieve that.

Mr Winninger: What about your help?

Mr David Johnson: My help, Ben's help, anybody's help; she would do that, no question. I'd bet on Hazel. I'd also bet on Mel Lastman and Tom Gosnell as well.

I wondered if you would give me just a few facts about your organization, your membership, for example. How many members would you have?

Mr Bouillon: We now have approximately seven tenants' associations that represent over 1,000 tenants.

Mr David Johnson: You have 1,000 members?

Mr Bouillon: Yes.

Mr David Johnson: When you say you represent over 1,000, do you mean tenants in buildings that have 1,000 units, or do you actually have—

Mr Bouillon: Yes, 1,000 units.

Mr David Johnson: But how many of them are sort of signed up and paid members of your organization?

Mr Bouillon: Right now we are a new organization. They are exempt for the first year, any new tenant association that joins the federation. In the second year they would be paying dues to the federation.

Mr David Johnson: How many of them would have actually signed a sheet to be a member? I understand that they don't have to pay, but how many would have actually signed that they would like to be a member of the organization?

Mr Bouillon: Like I said, we have about 1,000.

Mr David Johnson: The 1,000 have signed.

Mr Bouillon: Yes.

Mr David Johnson: How many tenants would there be in all of London?

Mr Bouillon: Approximately a third of London's 316,000 are tenants.

Mr David Johnson: About a third of the population, okay. You've raised a number of concerns on behalf of tenants, and you've obviously been working hard for many years in doing that. The true test, of course, is the democratic elections when people like Mayor Gosnell and the other members of council stand for election and issues are raised.

I'm sure you've raised these issues on behalf of your tenants on many occasions. Personally, having gone through that process myself, I know that tenants' issues are raised and the fact is that as you say quite rightly, tenants pay a higher proportion. Their assessment to market value ratio is about twice what it is for home owners; at least it is in Metropolitan Toronto. I assume it's the same in London.

Mr Bouillon: Likewise.

Mr David Johnson: These are issues that are certainly raised in Metropolitan Toronto during the election process, and democracy reigns. Those who appeal to tenants and home owners and everybody who votes are the people who are put into office. How are these problems coming up? Why isn't this sinking in? What's happening here that the process isn't working in London?

Mr Bouillon: As I mentioned, we are a fairly new organization. When we started a year ago, we were getting zero calls. We're up to 250 calls a month in just a little over a year and a half. As to the fact of tenants being taxpayers, a lot of them don't realize that they even pay property taxes, for one, and of course what we're working on right now is to educate tenants. We have a year to do so, because our next municipal election is coming up and we are working very hard to educate tenants. Where we find our strength is, if we know of anyone that we can support, we will do so in the next election.

Being a new organization, it's quite difficult to get people to realize that we are there, number one. We have some opposition. Landlords are not too interested in what we're doing, although we did address the London Property Management Association. We have some obstacles to face, but we are looking at a possibility of making a change in the next municipal election, hopefully.

Mr David Johnson: What I find curious is that landlords, of course, have one vote, and if you have an apartment building with 200 units in it, there are a lot of votes there. My experience in East York has been that many of the buildings—I can name you key areas in East York, the Thorncliffe Park area, for example, where in a large number of the buildings the turnout has in some elections exceeded the average of the municipality as a whole. There's this myth somewhere that no tenants vote, but I certainly don't share that, and from my experience that hasn't been the case. It's always puzzled me how these rascals get back in if they don't reflect the wishes of the people. It's kind of hard to explain.

Mr Bouillon: Part of the problem too is that it requires some money to enter even municipal politics. I think that might be part of the problem, where someone on a low income might be interested in going in. To me, the whole thing around the tenant issue is education.

Mr David Johnson: The fire chief in the city of Mississauga said that if basement apartments are legalized and if there is no workable right of entry for municipalities, and he did not deem Bill 120 to have a workable right of entry, there would simply be, unfortunately, more deaths, that this would not solve the problem. They really need a clear-cut right of entry to get in and make sure these units are safe. I wonder what your reaction is to that.

Mr Bouillon: Part of the process could be through education, through the newspaper, letting them know that the bill, if it is passed, is law, and give the tenants the option to be able to call in themselves. That's part of the problem right now. Most tenants will not call an inspector to come in because they're afraid of losing their apartments. If given the opportunity and they know about it, they would probably make the calls themselves. Again,

part of it is the education.

Mr Arnott: Why do you suppose that those who have advocated for years the concept of legalizing basement apartments have failed to convince many municipal governments that this is the best way to go?

Mr Bouillon: Part of this is the education that I keep referring to. We ourselves in London haven't been exposed to a whole lot of the illegal apartments because the people just won't phone. We've had two or three referrals, but that's about it. Our involvement and our education began with the Inclusive Neighbourhoods Campaign. I'm quite grateful that they were around to help us better understand what was going on, not just in our community but across the province as well.

Mr Arnott: Like Mr Johnson, I have a great deal of confidence in locally elected municipal officials. I find it very curious that people continue to be elected to office attempting to represent the majority of the people in their municipality. Others don't share that view, but the majority view seems to prevail. Yet here we have a situation where the provincial government doesn't like the decision that the majority of municipalities have made with respect to basement apartments, so it's stepping in in an area of responsibility that has been delegated to municipal government traditionally.

Mr Bouillon: Are you asking me?

Mr Arnott: That's just my concluding comment.

The Chair: Thank you, sir, for making the trip to see us today. We appreciate it.

CHELSEY PARK RETIREMENT COMMUNITY

Mr Tony Orvidas: My name is Tony Orvidas. I'm the administrator of Chelsey Park Retirement Community. It is a combined nursing home, retirement home, health club and seniors' apartment complex in London, Ontario. I'm also the past president of region 7 of the Ontario Long Term Residential Care Association—that's the region that covers the Kitchener-Waterloo and London area—as well as a designated spokesperson for the association.

I'll try to be as brief as possible since I'm sure that it's been a long day for you and that you have already likely heard very much of the areas I'm going to cover.

I'd like to address you on the issue of the impact that Bill 120 is expected to have on rest and retirement homes. I will do so from two perspectives, if I may, first from the point of view of Chelsey Park Retirement Community, which I represent, and secondly from the general position of the Ontario Long Term Residential Care Association and rest and retirement home operators.

Chelsey Park is a unique residence since our retirement home has been under rent review legislation since 1990. I'm sure Mr Winner could advise you more on that in that he represented the residents in our appeal at that particular time. It was a bit of a landmark decision since the rent review appeals board ruled that the rental portion of the monthly fee that we charge to our residents was to be covered by rent review while the services component was not. The basic reason for this, from what I understand, was because we at Chelsey Park were gradually converting seniors' apartments in one of our buildings

into residential suites. Consequently, the rent review board felt that our retirement suites could potentially be converted back into apartments and that therefore all rents for all units should be under rent controls.

Currently we provide accommodation and services to some 110 residential clients living in our 110-unit retirement home. We call these units residential suites, by the way, because we think they're just one step above a regular bed-sitting room and so forth. There are 247 residents living in our licensed nursing home. We also have 192 seniors' apartments, guest suites and respite units. We plan on gradually reducing our number of apartments by continuing to convert them into residential suites in that this seems to be an area of service where our clients seem to be most happy.

Chelsey Park is considered a top-of-the-line retirement home. We currently charge \$2,385 per month for a single-occupancy compact residential suite. It seems quite high in some cases, but that includes a kitchenette, living room, bathroom and bedroom, along with an extensive array of all-inclusive services.

Quite a few of our residents in the retirement home moved from our seniors' apartments as their care needs increased and their health deteriorated.

In our residential suites, we do not charge a first month's deposit to the resident, but it appears that under Bill 120, we'd pretty well be expected to do so. This could be a serious financial burden for some of our residents. We do not charge for the 60-day rent at termination based on the last day of the month of termination in that technically that could add up to almost 90 days, but we may be expected to do so under Bill 120.

As residential health care needs increase or when certain residents become aggressive or perhaps begin disturbing their neighbours, we have required these clients to move to higher levels of care if we could meet that level. That would be homes for the aged or nursing homes, whether our own or another. We expected the families of these residents to pay for and provide additional personal care for the residents until they made the move. These extra services could be purchased from us or any other service provider in the community.

1550

It appears to me that under Bill 120, we won't be able to ask these residents who cause difficulty to move. It would therefore not only adversely affect our other residents who are there from a very security concern perspective, but we would also likely be putting the heavy care resident at personal risk as well if we couldn't meet their health care needs.

Of the monthly fee that we currently charge, only a certain portion is considered rent. It can range, due to historical peculiarities, by \$100 or more per month for a one-size unit that's exactly the same as another, depending on the legislated maximum. So you could be paying rent of \$400 for one unit and \$550 for another just because of the way the place was set up when it was originally built.

The service component would therefore also be all over the place since the total that we charge for a com-

pact one-bedroom, for example, is \$2,385. That includes the rent and the services. A high rent in one suite would be offset by a low service cost in that suite, and that would balance another one where the rent was high and the service cost was low. So basically everybody's paying the same \$2,385 for basically the same unit and the same services. It's a real headache for us to say the least and our residents find it extremely confusing, but that's the way we had to play it under rent review.

Oh, yes, we have also implemented one rent increase date, July 1, to make it easier for everybody, so they all know that it goes up July 1, to make it easier for everyone, except our bookkeeper of course, because what we also had to do then, so that we wouldn't contravene the act, was to delay the annual increase which we're allowed until the next July 1. So we took a loss on almost every single suite just to make it convenient for our clients.

Our residential suite clients do not sublet their suites. We screen prospective clients and once we accept them, we then allow them to select whatever vacant suites they're interested in. Under Bill 120, it appears we won't have that option or the option to relocate a resident at our cost to another area of the building which is, say, closer to our dining lounge or to our health services office in terms of meeting their increasing health care needs.

We currently have full access to our residential suites as part of our standing understanding and our commitment to residents and their families. It's part of our service and it's expected by our clients. Under Bill 120, it would appear that we would have to give 24 hours' notice unless it's an emergency.

Also, as vacancies in residential suites come up, a suite previously occupied by one person may become a double-occupancy suite or vice versa. For example, there could be double occupancy if a married couple moved into one of our one-bedrooms, a brother and sister decided to share a two-bedroom, or two friends decided to share a room together. A second occupant by the way is charged for services only at a reduced cost. With Bill 120, it would appear that we would not be allowed to make this adjustment in occupancy in the residential suite depending on the needs of the clients.

How do our respite or short-stay convalescent units fit under Bill 120? It's an area that doesn't seem to be covered at all. We usually charge by the day, depending on what the client needs or wants, the length of stay. What will the client expect of us in the future? What if we can't fill a residential suite? Rather than keeping it vacant for a period of a month or longer, we often would rent it out on a day-to-day basis as a respite unit. Is this acceptable under Bill 120?

So much for Chelsey Park's specific concerns. As you note, there are quite a few of them.

I would now like to take a look at Bill 120 maybe from a more generic perspective. I know you have heard from other concerned individuals and groups detailing the specific problems Bill 120 could hold for retirement homes and for our residents.

Driving the Ontario Long Term Residential Care Association's called-for amendments is the fact that

retirement homes must be allowed to provide the quality care services their residents expect of them. I'll use my remaining time not to repeat the association's concerns, which you have heard—I'm sure you're well versed with the presentation it has made—but to tell you why our homes are not boarding homes, to point out why it's essential for the committee to understand that unique qualities separate retirement homes from apartment buildings. Your understanding is essential, because the bill must be amended to address situations found in retirement homes, situations inconceivable in a multi-apartment setting.

Already you have heard about retirement homes' emphasis on care, but you may not have heard too much about another basic and very crucial aspect of retirement home living. That aspect is the communal nature of retirement homes and the close day-to-day interaction of all residents, characteristics that are not part of your regular apartment building living.

For example, in an apartment building a person may step into an elevator, nod hello to the person he knows, say, in 2B—sometimes you never know your neighbours in apartment buildings and you could live there for years; I've personally had that experience as well. In a retirement home, however, a person may step into the elevator to meet his or her dinner companion updating another resident on the details about maybe the grandson's latest escapade.

In an apartment building, tenants may run into each other in the laundry room or collecting mail. In a retirement home, however, residents' days are filled with opportunities to join groups of others in activities or maybe just pass the time, and of course it is the resident who decides whether the day will be spent in the company of others or alone.

In an apartment building, factors that distinguish one building or complex from another may be soundproof walls and good ventilation. A retirement home, however, tends to take on the personality of its residents. In numerous instances it's the residents themselves who determine the norms of their home. They certainly do at Chelsey Park.

The norms can include the physical setup of the home, ranging from a large, open space with room for an all-candidates debate, for example, to controlled access areas that ensure a resident with Alzheimer's disease is in minimal danger of wandering out and getting lost outside.

The mental or emotional norms can also be very different with the individual facility. Consequently, residents who become aggressive or abusive tend to diminish the quality of life for all and steps must be taken to relocate these clients to more appropriate care facilities.

Earlier, I said that amendments to the bill must be made to allow retirement homes to operate to their residents' expectations. As well, amendments must be made to allow homes to maintain quality of life for all. It is from this perspective that the association, in its written presentation, has identified some of its concerns with the bill, a bill with its roots in avoiding problems rental tenants typically encounter.

In conclusion, I would like to urge you, don't try to destroy the nature of retirement homes by slotting this sector into regular housing legislation. Please recognize the unique needs of retirement homes and translate this recognition into appropriate amendments to the bill.

Mr Daigeler: Perhaps I'll start with your last remark. Did you just say you're fearful this legislation will destroy your industry?

Mr Orvidas: I think it will cause significant and difficult problems for the residents who live in our accommodations.

Mr Daigeler: Didn't you just say "destroy" or did I misunderstand that?

Mr Orvidas: Destroy the nature of retirement homes by slotting them into an area which they're not in.

Mr Daigeler: You think it will alter the character and the service you're providing?

Mr Orvidas: As the bill currently stands, I believe it would.

Mr Daigeler: But you don't think it threatens the economic viability of your undertakings.

Mr Orvidas: To be perfectly honest, from my own experience, not to a large degree. From my own experience, the rent controls have not caused us too much difficulty in that we had never really been charging much above those rental increases anyway; neither have the majority of retirement homes, particularly those that belong to the Ontario Long Term Residential Care Association.

Mr Daigeler: So your concern is with the character and the type of service. You feel it will actually decrease the service that you can provide to your clients, if you want to use that word.

Mr Orvidas: Primarily, yes.

Mr Crozier: It's my understanding, and I haven't sat in on all the hearings of this committee or all the meetings, that the service component under this proposed legislation will be left so that at a later time, under regulation by the minister, it also may be brought under the terms of the control. Is that your understanding?

Mr Orvidas: It appears to be so, yes.

Mr Crozier: That seems to me to be a bit dangerous. If it's limited or if the minister does bring it under that control, then I'd like your comments: first of all, what you do think of that, and secondly, am I correct in thinking that it may in some instances have some effect on the quality of that service if there are regulations that control the costs of it?

1600

Mr Orvidas: Quality, yes; from the perspective, I would say, of the client, of the resident, in terms of affecting their choice as to what services they want, in terms of the types of services that the general population in a retirement home might wish to see either increase or decrease, and very likely, the way things are going, would likely very much want to increase. There are varying needs. There are varying services provided. A number of communities have changed quite significantly, even during my time in the business, in terms of the type

of accommodation and services being provided.

Mr Crozier: To what degree might you be concerned, then, that this would come under the rent control aspect of it? Do you have a concern?

Mr Orvidas: The major concern is because rent review legislation is a major headache, and has been for us, in the amount of time, effort and energy it takes in terms of any changes other than those that are legislated as the percentage increase annually, to have to go through the whole process of requesting something extra in the event that we're providing significantly more as a result of a client's concern about a lack of services. It's going to put a lot of small retirement home operators, who are the ones people really depend on in a lot of the smaller communities particularly, in very difficult situations.

Mr David Johnson: It sounds like you need a good accountant to keep track of all these regulations and work around them.

Mr Crozier: If this doesn't work out, I'm an accountant.

Mr David Johnson: Oh, you're an accountant. You have an offer here.

Perhaps, just following up on Mr Crozier's comment, even the fact that it's the Ministry of Housing has raised some eyebrows because I guess there's some wonder out there what the expertise in the Ministry of Housing would be in terms of the kind of care, the kind of services you provide in your retirement home.

Mr Orvidas: Exactly. I believe the earlier preference of the Ontario Long Term Residential Care Association was the Ministry of Health, or if not that, the Ministry of Community and Social Services, ministries that I think have some understanding of the needs of the types of clients we serve, the types of residents who live in our homes.

Mr David Johnson: I'm a little hesitant to make this comparison, but I am familiar with the operation of Central Park Lodge in Metropolitan Toronto. Would your retirement facility be somewhat equivalent to Central Park Lodge?

Mr Orvidas: Quite similar. They tend to be one of the higher-end type of operations as well.

Mr David Johnson: But you have made the point, and I think a very valid point, that the kind of facility—I can understand this, thinking of Central Park Lodge. I can't think of your facility because I haven't been in it, but I can think of their facility and the communal nature, the day-to-day interaction, the parties they have, the social programs they have. People get together. People talk to each other. That sort of atmosphere is quite different, as you've indicated, from an apartment, for example, in most cases.

Mr Orvidas: Very much so.

Mr David Johnson: I guess your message is that if there's somebody who's disruptive in that sort of an environment, there's a major problem because of the closeness. Is that the point you were trying to make?

Mr Orvidas: Exactly. We have been pretty lucky in being able to convince families to make alternative

arrangements and so forth very often, by exerting a certain amount of pressure as well. With the Landlord and Tenant Act and things of that nature influencing our ability to encourage people to move to alternative accommodation, it would cause problems not only for the clients living with us, but more so perhaps for the individual who needs additional care and help and so forth where a family is refusing to pay for it and we can't provide it. It's going to put that person at risk.

Mr David Johnson: I wasn't sure I saw the bottom line. Is the bottom line here that you would like to be exempted from the Landlord and Tenant Act?

Mr Orvidas: If not an exemption, then a significant readjustment or some sort of alternative which would provide controls. It's something the OLTRCA has promoted for years in terms of trying to maintain quality standards, but turning it from a commercial enterprise versus a home for the elderly would not turn us into a standard, regular apartment building dealing with tenants instead of residents.

Mr David Johnson: I assume that the exemption from the Landlord and Tenant Act would achieve that. That's one course.

Mr Orvidas: True.

Mr David Johnson: Do you have any other courses in mind? You've mentioned some other alternatives.

Mr Orvidas: There are a variety that over the years have been proposed by the Ontario Long Term Residential Care Association in terms of certain standards and certain legislation that would require retirement communities, rest homes and so forth to meet specific types of standards. There are certain standards that the Ontario Long Term Residential Care Association itself is promoting. It's sort of an evaluation process that they're initiating to ensure that only the best are members.

Mr David Johnson: You mentioned some of the smaller operators and the problems. I assume there would be problems for all operators. In your view, if Bill 120 goes through in its present form, would it be a disincentive—well, obviously it would be a disincentive. How serious a disincentive will it be for the creation of new facilities in the future beyond what we have today, for new operators?

Mr Orvidas: That is a very difficult judgement for me to make. I suspect it would be rather significant.

Mr David Johnson: Maybe if I just list the other concerns, you can tell me if I've missed any. One is the ability to move a client or a resident who needs a higher level of care to some other facility; that's one concern.

Mr Orvidas: Or even another area in that same building.

Mr David Johnson: That's the second concern I had, to relocate to another area in the building. You also mentioned the 24 hours for notice of entry.

We certainly have run into people who have made deputations who have said that these are not major concerns, that these are things that happen once in a blue moon, that mountains are being made out of molehills here, that the operators are doom and gloom, that these

are the kind of things—the eviction or the 24-hour notice—that they run into hardly ever and that somehow they'll deal with it, so don't worry about it. What's your reaction to that?

Mr Orvidas: It's easy to say but it's the retirement home administrator, the resident and the family who would have to suffer the consequences if it didn't go smoothly. I believe if the bill were amended or adjusted to include various alternative options that could be used, even if they were rarely used, it would make things a lot smoother for everyone concerned.

Mr David Johnson: For example, with the 24 hours' notice of entry, is there some other option that could be put in place, because obviously you have to have close contact with the residents. We heard the story of one elderly lady who fell, broke her hip and was nearly unconscious. She wasn't at breakfast one morning, so they went up and they knocked on the door. Because she was nearly unconscious, she couldn't respond, and finally they just went in. Had they waited for 24 hours, it's tragic to think what may have happened. So there's that kind of ability that's required. What other option is there?

Mr Orvidas: I would assume if the legislation were amended to permit some sort of contractual agreement or a written arrangement that would permit immediate and ongoing access, or something to that effect. It's a verbal agreement that we have. Once you start enshrining things in legislation, that's when the difficulties can arise.

Mr David Johnson: This would be a contract perhaps that would overrule the Landlord and Tenant Act.

Mr Orvidas: Or augment it, possibly, in some ways.

Mr David Johnson: In terms of relocation to another part of the building, the same sort of agreement there, perhaps?

Mr Orvidas: Yes.

Mr Winninger: I think I can say honestly that yours is probably a model operation.

Mr Orvidas: It's nice to think so, thank you.

Mr Winninger: Diversicare was probably one of the first into this graduated living experience for seniors where you start in independent apartments, move to the residential suites and then the full nursing care.

In the course of that movement, however, from time to time I imagine, as you've already said, there are agreements that are worked out, either with the resident, or if the resident becomes incapable, perhaps with a substitute decision-maker. Is that correct?

Mr Orvidas: That's correct.

Mr Winninger: On the whole, it's been your evidence today that this hasn't been a major problem both before and after you came under rent review.

Mr Orvidas: I think it's been relatively successful in spite of the Landlord and Tenant Act and rent review, correct.

Mr Winninger: In spite of it, okay. I guess you're aware that a contract between a landlord and tenant can't really override the Landlord and Tenant Act, but the Landlord and Tenant Act provides for agreements, for example, early termination between a landlord and a

tenant. Maybe we're getting overly legalistic, but you can sit down and write out an agreement between a landlord and a tenant, and as long as it's consensual and doesn't violate public order and good morals, you can do that. It would seem to me that's what your dealings with the tenants have always been—or the residents, as you've called them—including one former MPP, who's still living there, I think, have always been predicated on, and that is that the consent of the tenant is important.

1610

Unfortunately, among the stories we've heard, we've heard of abuse, neglect and exploitation, which I've never heard of in connection with your facility but certainly Dr Lightman said that this is not only prevalent sometimes in boarding homes but that it's also prevalent at the high end, in luxury care homes sometimes.

The evidence of these experts and also residents has been that they need a greater voice, not perhaps in management but in how day-to-day operations are run, and I know from your newsletter that you do a lot of that. But the concern is that if the owner or executive director has all the authority and can make snap decisions as to whether you're in or out of your apartment, overnight, that's where the great potential for abuse can occur. That's what Bill 120 addresses, in part.

Mr Orvidas: The intent of Bill 120 is excellent. I think the execution has room for improvement.

Mr Winner: I'm sure all government members on the committee and the ministry will be interested in your recommendations.

Mr Gary Wilson: Thanks, Mr Orvidas, for your presentation. As Dave says, it's really gratifying to hear from somebody who runs a model operation, and perhaps it's not surprising that people like you would come forward as opposed to ones who aren't so civic minded. Anyway, we certainly appreciate your comments on it and we'll take them into consideration in further deliberation on the bill.

There are a couple of things I want to follow up on from what you said; for instance, your suggestion that the LTA will require you to expect the first month's rent. Isn't it true that you don't have to do that? It just allows you to do it if you find that's necessary.

Mr Orvidas: True, but it also, I suspect, would possibly provide the more unscrupulous operators as well to take advantage of that particular loophole, if you will.

Mr Gary Wilson: Right, but again you don't have to and there are many provisions, we think, that protect the tenant from the unscrupulous landlord by putting them under the Landlord and Tenant Act, and that's part of the legislation. As I say, you don't have to do that and if you found it's worthwhile without doing it, I would expect that you would continue.

Another thing, as far as the movement is concerned, Mr Winner's already suggested some of the provisions there, but I think the impetus of the bill is to give the tenants the surety of residence so that being evicted isn't an overriding concern in their mind. That can be put to rest, that they won't be dismissed for any superficial reason.

That's why you have the procedures. Let's put it another way. It's based too on giving them these rights, but based on the thought that they will be the best judge of what's good for them, within the circumstances that are determined by their capabilities, so we do have other things based in.

This has been raised: What does the Ministry of Housing know about care? One of the things we know about care is this idea of the peace of mind that comes with the assurance of tenure, that they know they have a place to stay without those superficial or whimsical reasons for being thrown out.

Mr Orvidas: That's where perhaps something like, if I remember correctly, Dr Lightman's recommendation of a fast-tracking process for eviction, depending on certain circumstances, might be appropriate.

Mr Gary Wilson: Exactly, but I think the important thing is that they are relatively few for the great number of people that this legislation affects. That I think is so, but that's not to say they're not important, but at the same time there are provisions that fast track doesn't address. For instance, it still requires some kind of process that would take days perhaps, whereas in emergencies there are professionals in both the mental field or the health field, as well as legal authorities like the police, who can be called in in extreme emergencies. That's as fast track as I think it needs to be, at least in our estimation, so there are these flexibilities that exist.

Coming back to the tenants and their wishes, again taking that as central, if with due consideration it was felt that it was best for them to move to another area in the facility, we might settle it right there, where they would agree and say: "Sure. That's what's best for me." The case that you raise with the tenant who doesn't think it's best might be relatively rare, and there might be very good reasons why they want to move as well. Could you comment on that, please?

Mr Orvidas: I think client self-determination is an excellent philosophy, on the understanding that the best services and accommodation for the whole are respected as well. Sometimes what happens is that there is a clash between the two, and in those cases our position has always been that the wishes of the majority would tend to rule in that particular case, even though we ourselves have often acted as advocates on behalf of a particular client who was maybe having difficulty with his or her neighbours.

Mr Gary Wilson: I think you'd agree there's a fair amount of agreement there on that, that it's just that clash, where it does occur, but as long as the rights of the client are guaranteed through appropriate legislation—the Advocacy Act, for instance, is part of this, as is long-term care, to make sure that the services are available so that the clients can make up their mind about the best arrangement.

The Regulated Health Professions Act is another area to report abuse, for instance, and to make sure the providers of care are regulated. So we're bringing in this network of services that are beyond the purview of the Ministry of Housing. I would say it puts the client in a quite secure frame.

What the Ministry of Housing can do, though, is to make sure that the peace of mind is there that comes from knowing that your place of residence is assured, and this is what we're trying to do through bringing it under the purview of the Landlord and Tenant Act and the Rent Control Act.

The Chair: Thank you for coming to Windsor today to see us. We appreciated your presentation.

Mr Orvidas: Thank you. I'm looking forward to the icy ride home.

The Chair: Is Mr Campbell of the University of

Western Ontario university students' council here, the next presentation? Are the roads really that icy from London?

Mr Daigeler: Yes. The 401 is very bad.

The Chair: Maybe we should wait a few moments but if he doesn't appear in short order, we will adjourn. We'll take a five-minute recess.

The committee recessed from 1619 to 1625.

The Chair: The committee will adjourn until Monday afternoon.

The committee adjourned at 1625.

ERRATUM

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Wessenger, Paul (Simcoe Centre ND)

White, Drummond (Durham Centre ND)

**In attendance / présents*

Substitutions present/ Membres remplaçants présents:

Cooper, Mike (Kitchener-Wilmot ND) for Mr Dadamo

Crozier, Bruce (Essex South/-Sud L) for Mr Sorbara

Lessard, Wayne (Windsor-Walkerville ND) for Mr Fletcher

Owens, Stephen (Scarborough Centre ND) for Mr Morrow

Wilson, Gary, (Kingston and The Islands/Kingston et Les Iles ND) for Mr Wessenger

Winninger, David (London South/-Sud ND) for Mr White

Clerk / Greffier: Carrozza, Franco

Staff / Personnel: Luski, Lorraine, research officer, Legislative Research Service

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Standing committee on general government

Residents' Rights Act, 1993

Comité permanent des affaires gouvernementales

Loi de 1993 modifiant des lois
en ce qui concerne
les immeubles d'habitation



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STANDING COMMITTEE ON GENERAL GOVERNMENT

Monday 31 January 1994

The committee met at 1403 in the Humber Room, Macdonald Block, Toronto.

RESIDENTS' RIGHTS ACT, 1993
LOI DE 1993 MODIFIANT DES LOIS
EN CE QUI CONCERNE
LES IMMEUBLES D'HABITATION

Consideration of Bill 120, An Act to amend certain statutes concerning residential property / Projet de loi 120, Loi modifiant certaines lois en ce qui concerne les immeubles d'habitation.

METRO AGENCIES REPRESENTATIVES' COUNCIL

The Vice-Chair (Mr Hans Daigeler): Order, please. We are resuming our sittings after a little excursion to Windsor, a rather interesting trip, on Bill 120, An Act to amend certain statutes concerning residential property.

The first presenter this afternoon is the Metro Agencies Representatives' Council, Rolf Paloheimo, president. Please introduce yourself and the gentlemen with you. You have half an hour, and if you'd leave some time for questions and answers, it would be appreciated.

Mr Rolf Paloheimo: Thank you. We'll try to be brief. My name is Rolf Paloheimo. I'm the board president of MARC. I'm a volunteer and I became involved because my late son, Shane, was dependent on agencies in MARC for therapy, inspiration and hope.

MARC is a coalition of over 50 agencies committed to providing vital services to persons with developmental disabilities. The agencies within MARC are funded in large part by the province, through the Ministry of Community and Social Services, under the Developmental Services Act, the Homes for Retarded Persons Act and the Vocational Rehabilitation Services Act. In addition, many of the agencies in MARC raise funds through charitable donations. All are non-profit corporations run by volunteer boards.

I've been asked to speak by the agencies within MARC that provide housing in conjunction with their other services. These agencies provide residential accommodation to about 1,100 individuals in 138 group homes and 163 apartments. In general, the agencies within MARC support the rights that the Landlord and Tenant Act gives to tenants and applaud the extension of those rights to persons who are not now covered.

Today, however, it is our purpose to inform you of what we believe are the unintended effects of Bill 120 that is currently before you. The unintended effects that concern us only relate to the situation where caregiving agencies are also housing providers or landlords, not those situations where care or counselling, if any, and housing are provided by separate parties.

The term "developmental disabilities," as defined in the Developmental Services Act of Ontario, means a condition of impairment present or occurring during a person's formative years that is associated with limitations in adaptive behaviour. They can occur without regard to

race, economic status or religion. By definition, developmental disabilities interfere with a person's understanding of their rights and responsibilities to one degree or another.

Ontario has long recognized the difficulty that persons with developmental disabilities face. It is for this reason that it provides around \$1 billion per annum for therapeutic care for persons with developmental disabilities. Much of the money allocated for this therapeutic and residential care is pursuant to the Developmental Services Act or the Homes for Retarded Persons Act. Under these legislations, caregivers are also often long-term landlords.

Agencies providing care under the Developmental Services Act or the Homes for Retarded Persons Act are among the most heavily regulated in the country, save perhaps correctional facilities and hospitals. All agencies providing care under these acts must be non-profit and run by volunteer boards. In addition, the Ministry of Community and Social Services has a network of 13 area offices with a total of at least 100 program supervisors whose only job is to supervise the 465 agencies providing service in this sector. Every major change to an individual resident's program, including those changes related to where they live, is scrutinized by the ministry.

The agencies in MARC, like all community agencies providing this kind of care in Ontario, involve parents, guardians or other advocates in decision-making for the programs of the residents in their care. The Advocacy Act will create even more stringent requirements for the representation of the interests of persons in the care of these agencies. The inclusion of charitable caregiving agencies under the Landlord and Tenant Act will not benefit these vulnerable people. It will increase the frequency with which they are in court and decrease the availability of housing to them.

The Landlord and Tenant Act is adversarial in its nature. The remedies available in it assume that the landlord and tenant are adversaries. Imagine if it applied to hospitals, correctional facilities or other facilities operated with a blended purpose: part residence, part therapeutic or other objective.

Some of the difficulties that the Landlord and Tenant Act will create are related to group living arrangements. Many of the residents that our agencies care for are dually diagnosed with developmental disabilities and psychiatric disabilities. If an individual living in a group home with others is abusive or violent towards his housemates, it is in the interest of all residents that the individual be separated from the others without resorting to traumatic confrontations or abusing trust relationships that exist. The Landlord and Tenant Act does not provide a speedy, thoughtful or caring remedy for this situation. The remedies provided under the act are confrontational, are demeaning to those who do not understand it, and have no way to balance the rights of innocent co-residents who are not articulate or assertive.

For example, I know that my son Shane, when he was alive, did not understand the words "ownership," "mine" or "yours." The reason for this, as I came to understand through knowing him, was that ownership is a concept related to the ability to control something. Whether that something is a toy or a piece of real estate, the concept is the same. Shane was severely multiply handicapped with cerebral palsy and vision impairments and needed help to do all things in life, including play with toys. Consequently, he never developed an ability to meaningfully control things. Therefore, he never developed an understanding of ownership in the way that I did when I was little.

I think it is fair to say that for him the idea of security of tenure was an abstraction, unrelated to the things that were important to him. He understood security in the sense of having someone familiar and kind to care for him: to feed him, bathe him, change him, play with him and teach him. To him, it meant to be in the care of his family members, especially his parents, his little brother, Erik, and other people he knew and who cared about him as well as for him. His greatest fear was that he would be left behind or alone with strangers. The idea that he had a right to stay in one place made no sense to him. People were what was important to him.

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For Shane, learning developmental concepts was a major achievement. We developed very sophisticated methods to help give him choices or control. In order for him to realize his potential, the care that I gave as a parent needed to be supplemented with professional help.

Most of the group homes operated by MARC agencies involve a high level of staffing and cost. If a person residing in one of our group homes becomes independent enough to live on their own, with assistance, it should not be necessary to declare that person incompetent in order to move them to a more independent setting. Why should they have the right to monopolize a home that they no longer need that may cost the taxpayer as much as \$250 per day when others are waiting to fill that same spot?

Similarly, if that individual, having moved to an independent setting, becomes a danger to himself or to others, should he be subjected to the processes envisioned by the Landlord and Tenant Act if he needs to be in a more supportive setting? Should the agency providing care for him be required to declare him incompetent in its attempts to remove him to a setting where more care is available? Does that process have any benefit for him?

It is puzzling for MARC agencies that the schedule 1, 2 or 3 institutions operated in the province will not fall under the act. However, the community boards operating programs under the same legislation, performing the same functions and responsible for many of the same residents, will now fall under the act.

Other difficulties arise in situations where individuals with developmental disabilities are learning to live on their own. An agency may be required to help with some of the activities or responsibilities that go with independent living. For instance, banking and credit matters are confusing and difficult for some. Tenant responsibilities are another.

For this reason, many agencies in MARC provide housing for some residents under head leases. Under a head lease, the agency assumes the rent and tenant obligations while it attempts to teach the resident about those same responsibilities while he or she occupies the apartment. If this arrangement comes under the Landlord and Tenant Act, agencies will not be able to assume those guarantees. Leases will be between landlords and tenants only.

Will persons with developmental disabilities who have no prior credit history, who may not understand credit concepts and who may not be able to hold down a job without assistance, be able to qualify to rent apartments on their own?

Even the Ministry of Housing refuses to make social housing available to persons with developmental disabilities unless confirmed support funding is supporting their application. This policy is not unspoken or hidden; it is clearly spelled out in all information with respect to supportive housing and social housing programs. This bill does not propose to increase access to housing for persons with developmental disabilities in social housing projects or in any other form of rental housing.

If the Ministry of Housing is unwilling to guarantee the tenancy of persons with developmental disabilities, who will? MARC agencies have and do. I am here to ask you to allow them to continue to guarantee tenancies for these very vulnerable people.

Currently, the waiting lists for residential placements among MARC agencies is longer than the list of actual residents served. Many have been on waiting lists for over 15 years. In addition, the province is anxious to move persons from its directly operated facilities into community placements in group homes and independent living situations. Applying the Landlord and Tenant Act to these homes will slow the admission of new residents, just as it slows the graduation of those who no longer need the services provided.

The agencies within MARC are all committed to providing care that preserves the dignity and legitimate rights of those they are caring for. At the same time, they are also charged with the task of educating their residents about those same rights and responsibilities. Their role as caregivers could be undermined by the Landlord and Tenant Act. If they are cast in an adversarial role, the task will become more difficult, not less.

Most agencies have standard procedures that outline the requirements that must be in place before a major change in a person's program can be made. The most common format includes the person himself, a guardian such as a parent if applicable, important people or therapists connected with that person's program and the Ministry of Community and Social Services program supervisor in an individual program plan.

Whatever the procedure, all agencies do their best to preserve the rights and dignity of their residents. If a criticism can be made, it is that the procedures are not standardized from agency to agency and that some agencies may have better procedures than others.

If there is a need to improve or standardize the pro-

cedures and regulations that govern security of tenure for residents who are funded under the Developmental Services Act or the Homes for Retarded Persons Act, the agencies within MARC are ready and willing to work with the government to develop procedures and to help formulate a caring and thoughtful regulation for this purpose.

I'd like to ask Mr James Lockyer, who's a board member at MARC and a lawyer who has taught landlord and tenant law in university, to comment.

Mr James Lockyer: I'm going to make comments in two areas.

First of all, we have noticed that the Lightman report, which was the forerunner of this bill, seems to have taken our side, so to speak, on this issue. But the bill, unfortunately, does not reflect the opinion of the report.

In his report he said, "We do, however, recommend that an adequate legal distinction be made between a rest home, which offers care, and a group home that offers treatment or rehabilitation so that criteria for the exemption for the latter can be specified clearly." That's at pages 90 to 91 of the Lightman report.

Our agencies, of course, operate homes that offer treatment more than rehabilitation, but they offer treatment and in a sense rehabilitation as well, although it's really very often permanent rehabilitative care that they offer.

Subsection 1(3) of the bill unfortunately doesn't reflect what the Lightman report recommended, because it limits the exemption to those homes which offer treatment or rehabilitation on a purely temporary basis, a six-month basis, where the home is not the permanent residence of the residents who reside in the home.

What we are asking, essentially, is that we go back to the Lightman report and appreciate the difference between the type of homes that simply offer care, which certainly should be subject to the provisions of the Landlord and Tenant Act, as is recommended by the report, as opposed to the kinds of homes our agencies operate that do provide treatment and/or rehabilitation, which we submit to you are singularly inappropriate to bring within the provisions of the Landlord and Tenant Act.

If one looks at the kind of residents we have, the imposition of the adversarial system to "assist" them is simply not appropriate. Their care at our hands or our agencies' hands and their treatment at our agencies' hands are in a context of a completely non-adversarial nature, quite obviously.

If you suddenly introduce a court system, a forfeiture system through the Landlord and Tenant Act which, first of all, requires a period of time, inevitably, to pass before someone can be moved from one home to another, even though that may well be in their best interests, that is something that is really unpalatable to us and unmanageable and will hurt the residents significantly and will also cause a very unfortunate side-effect of an acceleration by the agencies of calling in the police for assistance.

Ultimately, if our homes were to be subject to the Landlord and Tenant Act and we had an emergency assaultive situation, which we run into frequently, whether the victim be another member of the same

residence or a member of staff, then the only way to deal effectively with that, if we are faced with a Landlord and Tenant Act security of tenure situation, is to call in the police. Then the police will remove the person and in effect—and I don't think this is crying wolf by any means—the local detention centres will become the alternative accommodation for our residents, and singularly inappropriate for our residents as well.

As Rolf, our chairman, has said, we can well satisfy the kinds of concerns that are addressed by the thought of bringing us into this legislation by making sure that any homes that are exempt are exempt under the auspices of Comsoc, and that Comsoc can name them, can set down the appropriate preconditions before they can be exempted from the provisions of the act.

In that way the government retains control over the way in which residents are being moved from one home to another, from one unsuitable accommodation to alternative, suitable accommodation, but at the same time we're not caught up in the adversarial system that the Landlord and Tenant Act creates. Thank you.

1420

Mr Bernard Grandmaître (Ottawa East): The agencies within MARC are not the only people concerned with the Landlord and Tenant Act. In Toronto or in Windsor, people are very concerned that your clients will come under the Landlord and Tenant Act. I agree with you that the government's bill doesn't actually reflect Dr Lightman's report. Did you have an opportunity to single this out to Dr Lightman or the government, the ministry or the minister? Did you have a chance to meet with these people?

Mr Paloheimo: We met with the Minister of Housing in June 1993, around about, when they were considering the bill, and presented our concerns at that time.

Mr Grandmaître: What was the response then?

Mr Paloheimo: At our meeting the minister seemed to be open-minded about the bill, but didn't give any specific response to our concerns at that time.

Mr Grandmaître: As pointed out by your colleague, Comsoc can make exceptions to the rules. Was that possibility brought up to the Minister of Housing?

Mr Paloheimo: We discussed some alternative methods for ensuring security of tenure or alternative definitions of agencies or homes or locations that might be exempted. One of the elements she suggested was that a useful procedure might be to have people declared incompetent if it were necessary to move them against their will, but we weren't very happy with that suggestion.

Mr Grandmaître: Why would the government go beyond Lightman's recommendations?

Mr Paloheimo: I don't know, frankly. It's a bit of a mystery to us.

Mr Grandmaître: It's a mystery to all of us, and this is why we're looking for people to tell us.

Mr Gordon Mills (Durham East): It might be a mystery to you; it's not a mystery to me.

Mr Grandmaître: I'm making my point, Gord, and you can make your point after.

Mr Mills: You said it's a mystery to all of us.

The Vice-Chair: Mr Mills, you're out of order. You will have an opportunity later on.

Mr Grandmaître: We haven't had an answer from the government or from you people. Did you take your sleeping pills last night, Gord? You should have.

The Vice-Chair: Please address the Chair.

Mr Grandmaître: We're very concerned too that the government is acting this way with very little consultation, because we've been told by the minister that all groups concerned came before the ministry or the minister. We find it very surprising that the government chose to go beyond Dr Lightman's recommendations, especially forcing the LTA on agencies such as yours. I thought you had an answer and I still say we'll be fishing for an answer. Even the minister doesn't know why they went beyond the Lightman report.

The Vice-Chair: Did you want to respond to that, if you heard a question?

Mr Paloheimo: No, I don't need to respond, I don't think.

Mrs Margaret Marland (Mississauga South): Mr Paloheimo, thank you on behalf of the Progressive Conservative caucus for your presentation, because obviously, having had the personal experience that you have, speaking as a parent, this isn't an easy deputation for you to make today and we respect that very much.

Personally, I find it totally regrettable that you have to be here and make this presentation. Obviously MARC has done its homework. You met with the ministry seven months ago. A number of agencies in the same position, for some similar reasons and some other reasons that aren't exactly the same as yours, are all telling us that the Lightman report has not been drafted into this bill in the way he was making the recommendations in his report.

I thank Mr Lockyer for your comments on the record this afternoon, because when we draft our amendments to the bill to address the concerns you have brought to the committee, we certainly will be quoting your comments.

You said you met with the minister. Do you remember what staff you met with as well, by any chance?

Mr Paloheimo: No, I can't recall. I'm sorry.

Mrs Marland: Maybe you could just fax me a note about who was at that meeting. We heard last week from some other groups, the Massey Centre people, that they didn't meet with the minister but met with a staff person. It must be very upsetting to you to have had those meetings and have done your homework and then see the bill come out in its present form.

Was it the minister or the minister's staff who suggested that these people could just be declared incompetent or that you could go the police route?

Mr Paloheimo: No one suggested the police route, but the minister did suggest the incompetence.

Mrs Marland: Rather than just exempt the facility.

Mr Paloheimo: That was the discussion at the time, yes.

Mrs Marland: Because that whole avenue, whatever

you do, it's an added traumatic experience for the residents.

Mr Paloheimo: And demeaning.

Mrs Marland: It's incredibly demeaning.

Mr Paloheimo: At the bottom of it, our agencies are in a care and service role and it's very difficult to do that when we're also in an adversarial role. It's true that there may be a conflict between providing housing and providing care, but unfortunately that's the position we're in and we have to balance those rights.

Mrs Marland: I want to assure you that we will bring amendments to address the concerns you've brought to the committee.

Mr Stephen Owens (Scarborough Centre): I'd like to thank the members of MARC. It's nice to see you folks again, and George Wadlow particularly, who continues to be a part of my legislative life.

Mr David Johnson (Don Mills): Keep it up, George.

Mr Owens: You could probably start haunting Dave Johnson's door, because he doesn't—

Mr David Johnson: I agree with him.

Mr Owens: I'm sorry I missed the initial part of your presentation. In your comments on page 3, with respect to a person getting to the point where they could live independently, I don't quite understand why you would have to have the person declared incompetent to have that person transferred if there was consent.

Mr Paloheimo: If there's consent, but quite often, if you can imagine someone who's in a high-care setting and is having a lot of their assistance with their activities of daily living, in effect, the agency may need to push someone out of the nest, as it were, just to get them to live more independently. You don't want to do that in an adversarial way. You're trying to encourage independence, if you will.

Mr Lockyer: It's even worse, because you can't do it in an adversarial way. It would not be cause under the Landlord and Tenant Act to evict someone because they were now in sufficiently good condition that they could live in a more independent setting than they are presently being kept. People looking for their place couldn't get in because you couldn't get the one out.

1430

Mr Owens: I understand there needs to be a flow-through, as it were, to enable people who have developed skills to live independently in the community, which is the goal of all of us in this place.

My question is with respect to exemptions. As the member for Mississauga South indicated, Massey Centre—it's essentially a maternity home etc on Broadview Avenue in Toronto—came in and asked for an exemption with respect to application under this law.

I'm a little bit nervous about providing blanket exemptions or exclusions in the broadest sense because then you're going to have every Tom, Henrietta and Harry coming in and saying that in their particular care situation, notwithstanding that it's in Parkdale and probably was part of the routes that Ernie Lightman took during his study, they qualify for an exemption.

How would you suggest going about providing—

Mrs Marland: You could start with this list.

Mr Owens: I'll tell the member for Mississauga South if it wasn't for the Conservative government closing down Lakeshore Psychiatric Hospital and dumping people into the community we wouldn't need bills like this.

Mrs Marland: Oh, oh, oh.

Interjection: Hear, hear. It's true.

Mrs Marland: I'd love to debate that.

Mr Paloheimo: The agencies within MARC would be delighted to work with the government to formulate a caring way of addressing security-of-tenure issues. As I said in my presentation, all of the agencies do have a process for making decisions in a way that tries very hard to be in the person's best interests.

Mr Owens: Absolutely, with involvement with that person.

Mr Paloheimo: With involvement with that person and their guardian, if applicable, and so on. Most of the agencies in MARC would be very happy to see a standardized process in place that reflects their rights but does not involve confrontation or outside parties or involvement in the legal system in order to effect changes that may be normal in the course of a person's life.

The Vice-Chair: Thank you very much. That, unfortunately, is the time that's allocated to you. We certainly appreciate your presentation, both orally and in writing. You can be assured that your comments will be considered during the clause-by-clause discussion in March.

ANGLICAN HOUSES

Mr Terry McCullum: My name is Terry McCullum. I'm the executive director for Anglican Houses. With me are Julie Mancuso, who is the manager in our adult program area, and Chris Whittaker, a resident of one of our programs and a board member of Anglican Houses.

We have a written presentation. We didn't time ourselves exactly, so we'll try to hustle this a bit and give you a chance to ask questions. We'll do it in parts.

First of all, we'd like to thank you for the opportunity to be able to formally speak with you. We commend the government and all the parties involved in it in trying to protect rights. We also commend people who try to open up neighbourhoods that might have been formerly closed to people, to look at alternative forms of housing like basement apartments. We ourselves have suffered discrimination and exclusion through bylaws, especially group home bylaws, so we commend an attempt to open up neighbourhoods for more affordable housing.

At the same time, we commend Bill 20 for trying to address the needs of a lot of people who have been living in unregulated congregate and individual accommodation to ensure that they have protection in their housing from arbitrary evictions. That was the whole point of Dr Lightman's commission and report, to try and address that.

We do have a couple of areas of significant concern we'll talk to you about, but as an opening statement we want to commend the effort to address the protection of rights of people. I think we're all in agreement with that.

I guess everyone who'll come in here will say that they agree with the protection of rights.

I'll move right on here. We've handed out a flyer, and in this little booklet you can see all the programs we're working with listed on the back cover. Anglican Houses is kind of a conglomerate agency of sorts because we serve youth, adults and seniors, whereas most agencies serve just one group.

We're a housing and support organization. We have 29 different residential sites that we work with; some are just small houses, others are larger group homes, boarding homes. We have two seniors' institutions. We have two apartment buildings. We also operate a street outreach program for young people out on the streets involved in prostitution, trying to help them get off the street.

It's quite a wide spread. We do both housing in fixed settings plus community support programs, so it's quite a spread. In all of these cases we are involved with people with special needs and that's the common thread.

As a backdrop, I thought of a comparison to the United States and then to us. In the United States right now, the Department of Housing and Urban Development, HUD, has been looking at the problem of the homeless. They estimate that 85% to 95% of the homeless on the streets, and they have a bigger problem than we do, have special issues such as psychiatric disability, substance abuse difficulties.

What they're trying to do, and getting a lot of praise, is to create programs to connect mental health agencies and support service agencies to the homeless and to look at ranges of options for people, such as different kinds of transitional housing to help build people so they can go on into more permanent housing.

They are looking at the real needs of the people. They're not seeing it as an economic issue of a lack of affordable housing. Even if the affordable housing was in place, it wouldn't mean the people would be able to use it. There would still be a lot of homeless. So what's that all about? Let's look at it.

In Canada, I think in Ontario, we were ahead of the States, but it was only in the early 1980s that we seriously started looking at this issue. Without getting into the partisan stuff, someone made reference to the closure of hospitals. Well, that actually did trigger a concern in the community, as you know, that there weren't the resources there any more. That led to the establishment of the first transitional rehabilitative and alternative housing programs in Toronto and in other communities throughout Ontario. Those are the kinds of programs we're here to try and protect today, to talk about, because we think this is a little too sweeping in Bill 120.

In Anglican Houses we have some programs under LTA, the apartment buildings, of course. What we've done to try to protect the rights of people from evictions and arbitrary treatment is to involve the residents themselves in the management and regulation of their own housing. We have resident committees and we use membership agreements; it's all set out. People know what their rights are.

There is a process, a friendly process, we hope,

mirroring what the previous group said, a non-adversarial process of trying to resolve difficulties and deal with issues. But if push comes to shove—and we've hardly ever had to evict anyone outright—we have that as a last resort for situations where there could be danger to others. That's how we've handled it and we would like to continue if we could.

I'm going to talk about one of the areas of the bill that we have concern with and then Julie will talk to the other, which is a specific clause around the rehabilitative housing. Mine is more general and it deals with congregate housing, especially congregates where you have a group of people living together. It's not separate apartments like an apartment building. It's even sometimes more together than a rooming house would be because you don't have locked doors and you have people living together in supportive settings, boarding houses, whatever.

If we're trying to house people with disabilities and give them hope and give them options we believe you need flexibility to do that. I suppose the basic thing that everyone would probably agree with too is that the present Landlord and Tenant Act is inadequate in many ways around evictions. The process is legalistic, cumbersome, takes huge amounts of time and effort. It's really unresponsive, especially if you have situations of danger.

I suppose if that was corrected, then everyone would agree, or at least more people would agree, that maybe that will work out fine. But that doesn't happen now, so you'll probably hear groups coming in here advocating what they'll call a fast-track mechanism for evictions, and we certainly heartily agree with that.

1440

We know and everyone knows the horror stories. The Toronto Star did a series on the professional tenant who can stay in their housing for over a year and not pay rent and move on to the next thing. In non-profit housing, we have people running crack houses and also staying in their housing. You're probably going to hear tenant groups come in here and tell you, if they've had experience with membership agreement approaches, that they'd rather have that because they can have more control of their housing, the problem being that the rights of the one individual take precedence and supersede over the rights of the group to their quiet enjoyment of housing.

As an operator, we're trying to get flexibility. Maybe I could pose you a problem: Say you want to help kids get off the street, teenagers, young adults. They're involved in prostitution, drug addiction, crack houses, everything, but you think, "Hey, let's see if we can create some options here."

Trying to run that under the Landlord and Tenant Act with its current eviction processes would be a nightmare. If we had to do it now, what we would try to do is use membership agreements, try to build in the ownership of the tenant group, try and get some action going where people who are living there want to do something and then hopefully move the system along.

But our fear, if it's just blanket Landlord and Tenant Act, is that it's going to tie the hands of people trying to

create programs to help people move along and that there are too many risks. What about a dangerous situation when you can't move? You can go to the police, sure, but is that the way it's all going to go?

What would be some alternatives we see? The fast track is one. Another would be to exempt certain forms of social housing from the Landlord and Tenant Act outright but to put in special conditions like the MARC group was talking about, like membership agreements that have certain fixed criteria. That can all be put in place.

You're talking non-profit groups here; they have boards of directors. You're talking about public funding with all its regulations and accountability mechanisms. We're monitored all the time for what we're doing. We have to have goals and objectives and evaluation reports. So fast-track exemption of specific groups, or allow for a mechanism where groups could apply to be exempted because of the special nature of their housing and then that would be reviewed in its own right, or create a separate piece of legislation, which I know is probably beyond your time frame.

Mr Joseph Cordiano (Lawrence): Oh, we have time.

Mr McCullum: For instance, people may not realize this, but the co-op sector is not under the Landlord and Tenant Act. They're exempt from it formally, and that exemption I see is continued. What they have is a separate piece of legislation. They're the most confident group of tenants in the province.

We're here to say, for the people who are on the bottom, "Give us a break too," and not to make it into a farce. But the piece of legislation they have is subject to judicial review. You could probably create a similar mechanism for people doing specialized housing and allow for a more humane process and a little more flexible process, but definitely with accountability. We agree with accountability absolutely. People's rights have to be protected.

That's my piece about a broader spectrum of housing. Julie now will speak about one part of the act, about rehabilitative.

Ms Julie Mancuso: We're pleased that Bill 120 allows provision and recognizes the need for the exemption of rehabilitative programs from the Landlord and Tenant Act. We also agree with the general framework in which clause 1(3)(i.1) sets this out in that rehabilitative programs should be for a specified duration that should be based on the achievement of goals. However, we do have concerns regarding the specifications around the length of stay and the principal residence.

First of all, I would like to direct my comments and recommendations pertaining to length of stay to subclause 1(3)(i.1)(iii). In respect to the length of stay, Bill 120 proposes that the average length of stay should be for six months or less. However, it has been our experience that the rehabilitative period varies from individual to individual, and typically this process takes two years, from our experience working with people in the various programs.

A rigid criterion of six months or less does not allow a person sufficient time to prepare for independent living.

The nature of the issues that people bring to our programs are such that it requires a holistic, individual approach to people, focusing on such things as skill development, goal planning, increasing coping capacities and establishing social and support networks. It would be unrealistic to expect people to make these gains in such a short period of time. In fact, the pressure of having to do so could likely jeopardize a person's ability to be able to participate and derive benefit from the services which are being offered.

As Terry mentioned, we use membership agreements. We have found these membership agreements to be very effective in terms of setting out the conditions of the program, including the rights of the residents and the responsibilities of the operator, achieving a due process for situations which are conflictual. As well, we set out in our membership agreements a specified period of time, up to one year, which can be renegotiated depending on a person's individual needs. We have found this to be most effective.

Therefore, with regard to length of stay, we would strongly recommend that in programs which are rehabilitative the length of stay remain flexible and be based on the individual needs of the resident and allow for periods of contracting or recontracting in order for a person to attain their goals.

The next area we would like to address is the area of principal residence, subclause 1(3)(i.1)(ii). The stipulation in Bill 120 that the accommodation not be the principal residence also, in our opinion, undermines our ability to provide rehabilitative programs. The majority of people who apply to our programs in fact do not have an address where they can remain or return at the time of the application. For many, they don't have a permanent address because they're being discharged after a lengthy hospitalization. Consequently, when they come into our program, although that program may be for a transitional period of time, it is in fact their principal residence.

Another major implication of this clause for consumers of our services outside the Metro Toronto area is that people wouldn't be able to secure social assistance if they do not have a principal residence.

In order to support the transitional rehabilitative aspects of our programs, we suggest that the wording in this subsection be changed from "principal residence" to read "not the permanent residence," understanding that the residence is transitional.

However, it must be a person's principal residence if that's the only place they have to stay and it's required in terms of them getting social assistance. Any wording with regard to this section will need to be looked at in terms of the General Welfare Assistance and Family Benefits acts so that people aren't jeopardized in terms of their own social assistance.

The basis of our transitional rehabilitative programs is rehabilitation, not accommodation. Our programs are funded by the ministries of Health and Community and Social Services, which evaluate them based on the achievement of program and resident goals. We are being funded to assist people to develop the skills necessary to move on into independent living.

If our programs do not qualify for exemption from the Landlord and Tenant Act due to implications pertaining to length of stay and principal residence, we feel the rehabilitation nature of these programs will be undermined. If people are covered under the Landlord and Tenant Act in a rehabilitative program and they do not wish those rehabilitative services, they would not be obligated to accept that or to receive that. They could stay. That would prevent others who could benefit from the services from having access.

The accessibility to a flexible rehabilitative housing provision is necessary to our referring sources. We have appended two letters, one from the Whitby Psychiatric Hospital and the other from the Clarke Institute of Psychiatry, which support the benefits of a flexible rehabilitative service provision as they have found through Anglican Houses.

In summary, our comments and recommendations are based on our experience as a service provider to provide an array of housing alternatives to meet the varied interests and needs of our consumer groups. Many people have a variety of different problems and have been homeless, and we need to have the flexibility to ensure that the rights and options are there for them.

We hope you will recognize the impact of Bill 120 on the provision of our services and will consider our input as a service operator and advocate. We thank you for the opportunity to present our recommendations. I'd like to turn it over to Chris Whittaker, who will speak from his personal experience as a resident and also a board member of Anglican Houses.

1450

Mr Chris Whittaker: Good afternoon. Honourable members and guests, I wish to express my viewpoint on rehabilitative housing and why policies governing rehabilitative housing should not change in the years to come.

I have benefited from rehabilitative housing during my stay. It allowed me to collect myself and begin a path towards returning to a normal way of life after suffering through a period of confusion.

As a result of rehabilitative housing, I have profited greatly. Living in rehabilitative housing has given me a cushion of peer support provided by the other members of the house in which I live. I have lived in more isolated, individualistic rooming house situations in the past, and the members of my house are the best people I have lived with in years.

The program encourages that members share the house chores as well as contribute to the purchasing of those household supplies needed each month. The peer support I receive allows me to continue my education in a healthy environment. Staff support and assistance in goal planning have helped me prepare for more independent living.

I have found in this housing program that under a membership agreement, residents have input into the program. Residents have enough opportunities to express concerns and opinions. They make decisions through group discussions. They have a caring attitude towards each other and their personal space is respected by other residents and staff.

It is the flexibility of the current membership agreement that allows for peaceful resolution of difficult, explosive situations in this type of housing. This is more supportive and effective than a lengthy, court-oriented, Landlord and Tenant Act type of approach.

I have received educational opportunities through rehabilitative housing in that I'm on the board of directors of Anglican Houses as well as the advisory committee to the board. I also chair the general residents' association executive committee.

In addition, I was part of a select group that attended a conflict resolution mediation workshop that took place in the fall of 1992. This workshop gave me valuable experience in mediating minor conflicts.

My fellow residents and I urge you to consider the special needs of rehabilitative housing, needs for a healthy environment, in reviewing the rehabilitative housing policy under the Landlord and Tenant Act. Six months is unrealistic to expect people with special needs to develop the confidence and skills to move on to independent living. Length of stay should be based on individual need.

In closing, being a member of this rehabilitative housing program under the current membership agreement has been very beneficial for me.

Mr David Johnson: Thank you for an excellent presentation. We've heard two excellent presentations this afternoon and I think they're conveying the same message. It's one that I very much hope we're all hearing here today.

You have been able to accomplish a great deal of good work because you have the flexibility and you're able to deal with the situations that come before you. I just hope the pendulum doesn't swing too far. Unfortunately, there's an instance or two, obviously, that generated the Lightman report in the first case, but if the pendulum swings too far, then many good operators, yourself, MARC beforehand, are going to be very adversely affected. It's not just the operators but the people who live there. That's what we really must keep sight of.

In terms of the six-month stay period, there was some discussion I've had in the past that if this bill goes through the way it is and the six-month period is left, regrettably that may encourage some operators to get the people out within the six-month period. I don't know if that would happen or not. I suspect most good operators would say, "Look, six months or not, we have to deal with people and meet their needs." But there may be some operators who try to get people in a revolving door, out within the six-month period.

Mr McCullum: We don't know what the penalties are. Do we get sent to prison if we keep them longer than six months? But no, you're right. In six months, it's hard enough for people to get to know what their street address is. Yet the taxpayers' money is supporting these programs. We have to be sensitive to that, but six months is, I think, an old-fashioned idea of the revolving door.

The bill is trying to ensure stability in housing and permanence and support, and I think we can all be together on that. All we're asking is for renewable lengths. I think

the clause is excellent if it can be recontracted so that it's an aboveboard arrangement, so everyone's rights are protected, everyone knows why they're in that housing. It's not just housing, but that it can be recontracted so that people can have the kind of length of stay they need again looking at the principal residence issue too so that they can get their family benefits.

Mr David Johnson: You put forward a couple of good suggestions as an alternative to the Landlord and Tenant Act.

Mr Gary Wilson (Kingston and The Islands): Thanks very much for your presentation. It's quite inclusive so it gives us a lot to consider. There's a lot too to raise. I'll go quickly to the issue of security of tenure. Isn't that important in the rehabilitative process for the people who come to stay at your place? Giving them that security would give them a bit of stability that they could build on, as opposed to—I'd like to get into the membership agreement you mentioned. I would expect if they didn't sign that agreement, they wouldn't be staying at Anglican Houses, is that correct?

Mr McCullum: That's right.

Mr Gary Wilson: Okay. Just answer that question then. What about the security of tenure as balancing these other problems you raised, which I think you admitted in your presentation? The fast-track eviction—it sounds as though you would need it very seldom, that there aren't very many cases you have severe problems with. Listening to your presentation, you suggested it happens rarely.

Mr McCullum: But the problem is that if you don't have something standing behind the agreement—

Mr Gary Wilson: But I wanted to ask you about the balance, the security of tenure that comes with the Landlord and Tenant Act. We consider it very important that they have that reassurance or that security.

Ms Mancuso: Under the rehabilitative programs, if that time is more flexible, they would be excluded under the Landlord and Tenant Act anyway. It's the provisions of the membership agreement, the conditions of the program that would be signed and agreed to. A person's continuance would be based on their ability to meet the goals and objectives and, if they required more time, to extend it.

In the more permanent shared living situations is where we believe there needs to be a fast-track eviction process if that type of housing is going to come under Landlord and Tenant Act.

Mr Mammoliti (Yorkview): I've done some extensive work over the last few years on drug rehabilitation, and illicit drugs for that matter. I'm very sympathetic to what you're saying. I do believe we need to take a look at this particular concern. Is it not true that unless you have even the threat of eviction for maybe a drug addict, somebody who's getting rehabilitated, then the therapy might go to waste, that in essence the threat of eviction is a part of the therapy sometimes?

Ms Mancuso: It's part of a commitment the person is making to participate in something that's going to be therapeutic or rehabilitative as a part of being in that house and program.

Mr McCullum: We don't have these programs, but say the alcohol recovery programs that may present here later—well, saying you solve the time limit thing, I hope. An example there is, what if a guy enters the program in good faith and then he says: "I can't hack it any more. I'm going back to the bottle. I kind of like living in this place. It's really got nice wallpaper. I love it here. I'm going to stay here."

Under the Landlord and Tenant Act, see, they're not dealt with in any way. But then it just undermines the rest of the people who are there for a specific purpose. You need a motivation, like you say, but this is not regular housing.

Mr Cordiano: Thank you for a very thorough presentation. Yours follows many other presentations we've had where we're beginning to see that there's a universal dislike of some of the provisions of this legislation not just from disliking the legislation, but that it's going to end up being very harmful to institutions such as yours.

God, you have to wonder if there wasn't something in the minister's upbringing that prevents her from listening to some reasonable arguments that've been put forward. I think this is confounding me. I don't understand why the minister cannot realize that there is every reason to expect difficulties with this legislation resulting from aspects of it which will make your lives impossible.

What we're really asking the minister to do is be reasonable and to take into consideration what you're saying and to amend the legislation to at least make it palatable. I don't have time to ask you some real questions on this, but your suggestions with respect to evictions and various of the other aspects of your brief, these are things we've heard repeatedly from other groups that are operating institutions such as yours.

I say this because what's coming out of this now is a universal recognition that there are some problems with this legislation. The minister has to listen to you. It's absolutely essential that we make amendments.

The Vice-Chair: Thank you for your presentation. As you've just heard, obviously you have struck quite a responsive chord with the committee.

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DAVID HULCHANSKI

The Vice-Chair: The next presenter is Professor David Hulchanski, from the faculty of social work, University of Toronto.

Dr David Hulchanski: Thank you for responding to my request to be here. My focus is on the apartments-in-houses provisions of Bill 120, although I have been part of and I'm familiar with the issue we were just discussing too. But I'm going to, in my presentation, discuss the apartments-in-houses provisions.

My connection with this issue is long-standing, virtually from the beginning in the biblical sense, although in Ontario "in the beginning" means the early 1980s. It was called residential land use intensification. This is where we get the general intensification issue, but part of it is second suites in apartments.

I am the author of the first of the Ontario government's studies on residential land use intensification. This

is *Making Better Use of the Existing Housing Stock: A Literature Review*. Before the then Conservative government—Claude Bennett was the minister—launched into this effort, of course you want to find out before you commission expensive—

The Vice-Chair: That is "In the beginning."

Dr Hulchanski: Right. Before launching into a major series of studies, you want to make sure you're not going to study something that already has been studied, and the 150 pages here summarize what was known as of that time, which was 1982, about this issue.

I'm both a professional urban planner and a university professor. As a professional, I have a master's degree in planning, which is expected. I was a planning consultant in the past and I'm a member of the Canadian Institute of Planners and the Ontario Provincial Planning Institute, and for eight years I taught urban planning at the University of British Columbia, so I was a member of the Planning Institute of British Columbia too.

Academically, my PhD is in urban and regional planning. I'm a full-time university professor and researcher now, since 1983, and my research and teaching focus, again, is right on this topic, what I call the difficult part of the housing problem and always has been: lower-income households and rental housing supply.

In addition, in the late 1980s I was director of a university research centre, the UBC Centre for Human Settlements. I did a number of studies; for example, for the Canada Mortgage and Housing Corp, one titled *The Municipal Role in the Supply and Maintenance of Low-Cost Housing: A Review of Current Initiatives*. I did a survey of North American municipal initiatives too along these lines.

Finally, ironically, my PhD dissertation was titled *The Evolution of Land Use Planning in Ontario*. That's why I can talk about "In the beginning," because in the beginning for land use planning in Ontario is around 1900. In the year 1900 there were no land use planning regulations. People could build virtually whatever they wanted anywhere they wanted in virtually any way they wanted. There were minimum health codes and minimum building standards at best in the province.

I studied how we got from that point, which is sort of zero, right to largely where we are now, the modern period after the Second World War. Here we have a 60-year history of zoning, the separation of land uses but also the separation of types of residential structures, and that's what's important and that's where I'll end.

Apartment in houses: What kind of public policy is this? After outlining all my urban planning credentials, I'm here to tell you that, in my view, apartments in houses is not a municipal planning issue in the sense of a land use planning problem or difficulty. There are no unique, rare or exceptionally perplexing, onerous, troublesome land use planning issues or difficulties associated with having one or more additional people living in our owner-occupied housing stock.

We have among the best quality of, and largest, single-family housing stock in the world. It's built to the highest standards on earth, for the most part. Many dozens of

costly studies have demonstrated this. Experience in every other jurisdiction I know of leads to the same conclusion, and I have carried out surveys of the United States and of many other Canadian municipalities.

Why is it not a municipal land use planning issue? The land use planning aspect has been very well researched over a dozen years and the stack of reports, starting with this first one, is about like this. I hate to imagine the cost. Mine was quite cheap, I'm glad to say, or sad to say. But all these studies find no unique or exceptionally troublesome land use planning issue or difficulty. They can all be addressed. I'm sure others have spoken to you about these, and I will if you ask me.

We have here in fact a rare case involving experimental research, which is usually impossible for most social issues and policy proposals. That is, tens of thousands of illegal apartment in houses already exist in Ontario and virtually right across the country. I've studied them in British Columbia, in Vancouver in particular. Have they destroyed neighbourhoods? No evidence at all of this. Have apartments in houses lowered property values? No evidence of that. In fact, the evidence is just the opposite.

The real estate industry and house buyers already assume they can create apartments if they want due to the inability to enforce the ban. It's just a fact of life in our real estate markets. House values already reflect this potential and people choose to do it or not to do it, no matter what the municipality says. So there's plenty of evidence to the contrary that there's any negative impact on neighbourhoods.

The studies are getting a bit ridiculous. I have here a state of California study, 1988—lots of planners are making lots of money—The Effects of Subsidizing Affordable Housing on Property Values. This isn't a study of it. This is a study of the studies. This has found 15 studies that they've studied and analysed the methods and all that, and none of them find—and this is in the States in fact, where there are lots of differences from here, but the situation is a bit worse in terms of quality of some of the things—no negative impact on property values. This is one little example of a study of such studies.

If apartments in houses are not a land use planning problem, what kind of problem is it then? I have three things to say to that and then I'll answer questions. First, it is a practical issue relating to the recognition of reality, in my view; second, it's a property rights issue; and, third, it's a human rights issue.

First, apartments in houses are a practical issue relating to the recognition of reality, as I call it. In current slang people are saying, "Let's get real, folks." Tens of thousands of apartments in houses already exist and have for a long, long time. They are not going to go away. They have not gone away in other jurisdictions that have tried. Pretending they don't exist as a real part of virtually all single-family districts in Ontario is simply incredible.

Apartments in houses exist as part of the reality of the current real housing stock in our low-density residential areas. Some are great units, some are poor-quality and unsafe units. Why do we allow poor-quality, unsafe housing of any type to exist in Ontario? Why are munici-

palities not doing their jobs? This is fundamentally their job.

Bill 120 simplifies the municipal task of addressing the poor-quality, unsafe units. This is a much smaller task than pretending that all apartments in houses will somehow be made to go away. You have a bigger job there.

1510

Bill 120 requires all legal apartments in houses to meet reasonable building, fire, zoning and property standards, as they should. Bill 120 simplifies the process for enforcement of municipal zoning and property standards, which needs doing. Bill 120 allows municipalities to get real and to deal with the real issue: poor-quality and unsafe units. That's the issue. Let's deal with the real issue here. I think Bill 120 allows us to deal with that real issue.

My second point on apartments in houses: I see it as a property rights issue. How far can the state go in telling us how we can use our property? How far can the state go in telling us whom we can live with in our property? Property owners have voted with their hammers on this issue. They've created a vast stock of rental housing even though it's illegal to do so. Tenants have voted with their dollars on this issue. They choose to live in those units.

"Property rights," of course, put in quotation marks here, consist of a socially defined bundle of rights. It comes down to the Legislature from time to time defining and redefining what is the socially defined bundle of rights associated with property ownership in Ontario. By not getting real, by not recognizing reality, by not voting for Bill 120, it means that there are members of the Legislature, in my view, who want to push the boundaries of the appropriate role for the state in our houses in the wrong direction. There are already enough regulations affecting where and how we can live, so this is very clearly a property rights issue.

Are members of the Legislature in tune with the realities of daily life as lived by the majority of our citizens, owners and renters? All evidence I've seen points to a vast majority of people in favour of apartments in houses. The polls show this.

In Vancouver, where there are 27,000 illegal units in a housing stock of, I believe, about 200,000 units, the city had a clever idea. "We will have a plebiscite and allow neighbourhood by neighbourhood to vote whether or not they can have secondary suites in their area." Very democratic, right? So they started in the fringe area, that is, on the edge of the better neighbourhoods, because they thought the vote would go in their favour. They favoured somehow getting rid of illegal suites. But in fact the vote went the other way and they were quite shocked.

With the second neighbourhood, there was a postal strike near the end. If you counted the ballots that got caught in the postal strike, the citizens voted in favour of second suites. If you exclude them, they voted against. Of course, city council in its wisdom decided then to exclude the ballots that were delayed by the postal strike, which I don't think is fair.

Any time I've seen people asked to think about it and express an opinion, they've been in favour of this. They

don't want the state encroaching even further on the details of their daily lives, how they use their living space or whom they can live with in their residential space, again within all the reasonable public health building codes and all those bylaws and all those reasonable standards of the municipality.

My last point: Apartments in houses are a human rights issue, quite clearly. The history of municipal residential zoning, which I've studied a lot, is a history of exclusion. We've been zoning people increasingly, not just land uses. I've been reading the 1920s, 1930s, 1940s, 1950s literature where practitioners were quite concerned, lawyers were quite concerned, lots of people were quite concerned once municipalities stepped over the boundary of saying, "Here is an industrial area. Here is a commercial area. Here is a residential area," because they quickly began saying in the residential areas, "Here's apartments and here's not apartments." That's sort of okay, but then in residential areas they kept on fine-tuning that, where they crossed the boundary between regulating buildings, land use categories, and regulating people. Single-family districts with detached houses are generally owner-occupied houses and you begin talking about people. That's what this history is full of.

When I returned to Toronto and the University of Toronto in 1990, I served as a volunteer on a children's aid society committee, the housing committee. That housing committee brought together a number of people who were concerned about this issue before the Legislature even was talking about it, as far as I know. We drew up a petition and we discussed it somewhat. The people in the room from around the province had been to enough meetings to know that the objection of people to second suites is not a planning issue, because all the planning issues of course have been beaten to death for 12 years. People are quite often explicit about what they mean.

In my little study I include some clippings from 1982. There was a meeting where "500 angry area residents," as the newspaper said, showed up for a proposed social housing project. A columnist says he wandered around the people in the room, who happened to be immigrants from the 1950s; this was in 1982. He says the people jostling to the microphone delivered with a fresh passion all the old arguments against development: too much traffic, property values being affected, neighbourhoods already overcrowded and all that. He then says, "In the corners of the room, one heard darker sentiments: 'Hey, I hear the city's bringing in another load of those boat people,' and 'We don't want Pakistanis.' A teenage boy told me confidentially, 'They're going to bring people from Iran and El Salvador.'"

When we drew up our petition, which you probably have seen, it led to the establishment of the inclusive neighbourhoods committee. It talks about human rights there, not the planning issues. We didn't outline planning issues there; we outlined human rights issues.

In the United States the law is quite clear. They've had their Bill of Rights longer than we've had our charter. It's called exclusionary zoning. Exclusionary zoning is illegal in the United States. Municipalities have brought it to court all the time and they have mandated inclusion-

ary zoning. I don't think we want that here. We can save ourselves lots of money in legal fees by doing the right thing now.

I've distributed my Plan Canada article recently, And Housing for All, and that defines what is inclusive planning, exclusive planning, inclusive zoning, exclusive zoning and all that. In order to save time, I'll simply distribute that.

One last point, almost a separate little point. I've heard it said, "Perhaps absentee speculators will move into our neighbourhoods and carve up the houses." Look at the economics of this. If you're talking about a better-quality neighbourhood where houses are a bit more expensive, in the \$400,000 or \$500,000 range, it's the tiniest percentage of tenants who can afford the rents that would be required to make that economic investment even at current property values and current interest rates.

If you take a lower-cost neighbourhood where houses are cheaper, let's say \$200,000, in Toronto or Metro Toronto, that house generally is smaller because it's cheaper, and often in bad condition because it's cheaper. With the amount of money you have to put into it, and if you make a go of it, it's still \$1,000 a month or more to make a go of it. Given the nature of that neighbourhood, you're probably improving the social mix in the neighbourhood. You're bringing in tenants who are at the high end of the income spectrum for tenants. So that's not an issue either, in my mind.

I trust I've been clear and I'll answer any questions you have.

Mr Mills: Thank you very much, professor. I enjoyed your presentation so much that I've only got one regret, that the mayor of Mississauga wasn't here today.

Interjection: We've got Margaret Marland here.

Mr Mills: But we've got a substitute here, I believe. Anyway, no offence.

Mrs Marland: I'm not the mayor's substitute.

Mr Mills: I really thought you made some points that I, sitting on this committee, hadn't seen so far.

I just want to talk about houses with private septic systems, because they're a sore point with me. I've got a house that's on a septic system. My children have all grown up, they've gone, and I've said to the minister, "What are you doing to me?" She said, "Well, it's pressure from the municipalities." What is your argument, professor, for no exception?

Dr Hulchanski: I frankly don't have a position on that. I would defer to engineers, that they make a case whether that's valid or not. I'm sorry I'm not able to professionally say something about that as a planner.

Mr Mills: Okay. I thought you had said something about it.

Interjections.

Dr Hulchanski: I generally agree with that provision, but you're right. There are conditions, but can one define the conditions where it would be allowable?

Mrs Marland: We only flush the toilet once a day.

Mr Mills: What have I said wrong, Mr Chair?

The Vice-Chair: Nothing. Do you have a question?

Mr Mills: No.

Mr Gary Wilson: Your presentation certainly is very clear and I think speaks very strongly in support of the bill. There are a couple of things I'd like to ask about. One issue that's been raised quite strongly here is the issue of fire in second apartments. What's your view on that? Have you found them to be more hazardous than other kinds of accommodation?

Dr Hulchanski: We have owner-occupied stock that is in quite poor condition. We have people who smoke in bed. I've thought about this a lot, and there's no connection between all that. Fireproof buildings sometimes burn down, so there's no logical connection there. There are going to be fires. We do our best to prevent them. That's why I say municipalities should get real and deal with the job of the unsafe firetrap units. That's a smaller number than the total number of illegal units.

Mr Gary Wilson: Do you see Bill 120 worsening conditions in student quarters adjacent to universities? You've probably had some experience with those areas, maybe even studied them.

Dr Hulchanski: Will Bill 120 worsen the accommodation? No. The people who rent out rooms privately to students do so now and it's hard to even find out who they are. Again, we're just making legal a certain kind of situation, so municipalities in fact have a smaller job to do when there are clearly illegalities. That would be an externality problem. If there are too many students, if there's an absentee landlord, one tends to find out fairly early if there's a problem there. Are the existing bylaws sufficient to deal with that? I tend to think they are. In my experience, they are, the noise bylaws and all the other bylaws that one can use.

It's already been ruled in the Supreme Court that you cannot legislate a definition of a household. People can choose to live with whom they want.

Mrs Marland: I agree with you on that. That is true.

Mr Owens: You touched briefly on zoning by occupancy, zoning by ownership. Could you expand a bit? We've heard a number of deputies come forward and suggest that if we're going to do this, the only kind of accessory apartment should be in those homes that are owner-occupied. Can you comment on that?

Dr Hulchanski: I think, and I'm not a lawyer, that there are definitely legal problems with that, of the law laying that out, so that's probably not legally possible. Remember, an investor is worried about the property value. Again, just think about the cost of a house in one of the "better neighbourhoods" and the cost of a house in one of the more average neighbourhoods. It's economically very difficult to pull that off.

We already have lots of these investors or speculators who invested in condominiums hoping to make a capital gain. They've gotten burned and they've learned a few things. The market has learned a lot from this. Right now there are a lot of condo owners, as investors, renting out these condo units at less than economic prices, because it's not economically viable to do that and make money. They were hoping for a capital gain. I don't see a great

capital gain coming for somebody who abuses this, carves up and ruins a house in a neighbourhood. It's going to be worth less than what it was worth before. It just doesn't make any economic sense to me.

1520

Mr Grandmaître: I can see why you're not in favour of Mr Sewell's latest recommendations on planning and just about everything in the province of Ontario, because his mandate was so wide that you could touch just about everything in the province.

Also, did you say that land use planning wasn't or should not be a municipal issue? Did you say this?

Dr Hulchanski: No, the issue of apartments in houses is not a land use planning problem or policy problem. That has been studied. Is there a parking problem related to it? All the things that planners deal with I think have been addressed in this stack of studies that my first study initiated, you see. That's all I meant by that. The municipalities have all the different categories of zoning and that's what they're responsible for.

Mr Grandmaître: With all your experience at the municipal and provincial level with planning, if I can use the Planning Act as a tool, do you think that municipalities are lacking this good planning tool in the province? There have been so many amendments to the Planning Act in the last 60 years and there have been a thousand studies done by people like you, and it's not working.

Dr Hulchanski: You're asking a good question, but it's very broad and general. To be specific, do they have enough power or not? I have sympathy for what you're saying, but let's face it: In Canada we have some of the best houses and neighbourhoods on earth. It comes about by this incremental adjustment to what we're doing, by learning what we're doing. When I was saying let's get real at least about this issue, let's let municipalities deal with the real problem, which is the illegal, unsafe units.

Mr Grandmaître: Give them more power.

Dr Hulchanski: An apartment that is unsafe and a firetrap, remember, is an apartment in a house. That's somebody's house, an owner's house which is unsafe and a firetrap.

Mr Cordiano: That point is precisely the point I wanted to zero in on. Just because Bill 120 is passed it will not necessarily lead to safe places to live. There has to be provision that goes well beyond legislation to enable municipalities to allow for inspection and to enforce what Bill 20 attempts to do, that is, provide safe living conditions. That hasn't been contemplated in this bill.

The fact of the matter is that to bring many of these units up to standard will require an additional capital outlay by many people who are first-time home buyers, upwards of around \$7,000 to \$10,000 to make those units safe. Half the number of units out there are unsafe, do not meet standards. How do you contemplate resolving that problem? By and large, you've got first-time home buyers who are in need or people who may not be first-time home buyers but need the money to keep their mortgage payments up.

Dr Hulchanski: There's no magic bullet. There's an incremental process, step by step. I think what is in Bill

20 is a big leap forward, and definitely it's not everything and it's not going to solve all the problems, but it is going to go a long way in making a big step and that's all. It's a good, big step forward.

Mr Cordiano: But at the end of the day there will still be illegal units out there because they're not going to be brought up to standard.

Dr Hulchanski: Even without Bill 120 there will be and there'll continue to be. At least Bill 120 gives some more authority to municipalities, maybe not enough that they want, and I'm not prepared here to say—we're talking in general.

Mrs Marland: Professor, you're certainly a very controversial, interesting deputation, I must say. At the beginning, when you were giving us your lengthy curriculum vitae, I thought you were going to give us some very knowledgeable opinions on planning, but your opinions are so selective.

You say it's a property rights issue. You say it's a human rights issue. What you have to really wonder is, whose property rights are they? Are they the property rights of the tenant or are they the property rights of the person who owns the property who may have bought that house in a single-family area, may have bought it as a town house without basement apartments? Now their neighbour, under your scenario, should have the right to add this additional unit. So what you end up doing, from a planning perspective, is weighing the property rights and the human rights of the person who's made the investment against one neighbour who wants an apartment and one who doesn't. I would suggest to you that that's pretty selective.

Nobody talks about these wonderful garden suites, and as somebody who has obviously earned some income over the years in dealing with urban planning—although now it sounds like you're not really interested in planning any more because you're not interested in zoning—what you're saying now is that in spite of the thousands of dollars which I'm sure you've earned in urban planning, "Let's throw out all those official plans and all that planning that has been done in municipalities," where they have planned the types and sizes of services relative to the urban plan for the land use of that area. What you're saying is, in supporting this in such a prolific way: "None of that matters. We can just double up all the occupancy."

I want to ask you about the garden suites that they can have for 10 years. Have you any idea what kind of building the municipalities are going to approve that has to be demountable in 10 years' time and yet meet all the codes?

Mr Mills: He's coming at the end of the month, the guy who makes them.

1530

Dr Hulchanski: No, I know. I've seen designs and I don't have problems with that either. The problem is how you summarize what I had to say. There's a question of externalities. You talk about property rights, you talk about the tenants and then the owners of the house, but then you talk about the house next door's property rights.

This is why I say okay, you're right, it's a value judgement, where you draw the line—

Mrs Marland: It sure is.

Dr Hulchanski: —and show me the evidence of how a second suite negatively affects the neighbours.

Mrs Marland: Come to my riding. I'll show you.

Mr Mammoliti: Oh, so they already exist then.

Mrs Marland: I said they exist.

The Vice-Chair: This is a lively Monday afternoon. I'm sorry. Did you finish your remarks?

Dr Hulchanski: Yes.

Mr David Johnson: In terms of planning issues, if it's not a planning issue, the number one expectation of people in terms of planning is that they will have the ability to participate in the planning of their own community, and this chucks that right out the window.

Your opinion is that this will assist in the enforcement, allow municipalities to get on with the job they're supposed to do. That's your opinion as a representative of the faculty of social work; on the other hand, I have the opinion of the mayors of all the municipalities who have been before us, the fire chiefs who have been before us, and they say this legislation does not allow them, for example, sufficient entry rights and they've been dealing with this issue day by day over years. It still requires reasonable grounds and will not allow them to get into these units. The fire chiefs are of the same opinion.

The process of enforcement, which is long, time-consuming and costly, isn't even addressed in this particular legislation. The fire chief from Mississauga says that without extra powers you're simply going to have more units and more fires and, unfortunately, probably more deaths. I'm reconciling what they're saying with what you're saying. I don't know if you have any opinion on that, but the evidence seems pretty clear-cut.

Dr Hulchanski: There's no magic bullet. We're making incremental steps, and that's what we've done since 1900 in this province to try and have good neighbourhoods.

Mr David Johnson: That's a very small increment.

Dr Hulchanski: Well, you're going to define the problem and chase after the bad units instead of trying to chase after all such units. It's a more manageable task.

Mr David Johnson: The municipalities are saying it doesn't scratch the surface.

The Vice-Chair: Dr Hulchanski, you certainly create a lot of interest, as an academic should. We thank you for your presentation, and you know the committee will be proceeding with clause-by-clause in the second week of March.

Interjections.

The Vice-Chair: May we have order, please? I think we ought to go back to Windsor where there is freezing rain that seems to cool the tempers a little bit more.

EDEN COMMUNITY HOUSE OF TORONTO

The Vice-Chair: Next is Ted Shaw, president of the Eden Community House.

Mr Ted Shaw: Good afternoon. My name is Ted

Shaw. I'm president of the board of directors for Eden Community House. Susan Carr is a staff member at Eden Community House, and Sean Doherty is a board member and past-president.

I'm pleased to be here to represent the views of our board, staff and residents on Bill 120 with regard to the impact of this bill on the individuals who live in our home at 1 Hillholm Road.

Eden House is a 10-bed group home for adults with severe and persistent mental illness. We've been situated in the Forest Hill area of Toronto for 11 years and throughout that time have been providing rehabilitation services to people who need a high level of support.

Staff at Eden House operate using the principles and practice of psychosocial rehabilitation. The goal of psychosocial rehabilitation is to enable individuals with a disabling mental illness to achieve their maximum level of community integration and self-reliance. Interventions help the individual learn to compensate for the effects of the symptoms of the illness through the development of new skills, coping techniques and a supportive environment. Eden House staff work closely with the individuals in the program so they may gain skills necessary to live successfully in the community with the least amount of formal support as necessary.

We agree that supportive housing programs, in general, should be under the Landlord and Tenant Act. We also recognize that for programs whose primary purpose is rehabilitation and not accommodation, there need to be exemption criteria established for these special-needs groups.

We are concerned that the amendments being proposed by Bill 120, particularly as they apply to the criteria for exemptions of rehabilitative services or programs from the act, will have a negative impact on the lives of the people living at Eden House and on our continued ability to provide the high quality of service for which we have become known in the mental health community. We have some suggestions which we think would reduce the potential problems with the act and which we hope you will take into consideration when reviewing the bill and making your final revisions to it.

The role of rehabilitative residential settings, programs which are both rehabilitative and transitional in nature, must be recognized and endorsed as a viable and necessary option for people with severe mental illnesses. We believe that such rehabilitation programs for the severely mentally ill must be exempt from the Landlord and Tenant Act and we think that the following suggestions would more realistically recognize and accommodate the types of programs operating in this sector of the community.

Under the definition of "care services," rehabilitation programs are exempt from the act provided they meet certain criteria outlined therein. I would like to suggest some refinements to the proposed amendments in Bill 120, as they refer to part I of the Landlord and Tenant Act. I'm not used to referring to specific numbers in the act so you'll pardon me if I make some mistakes, but I hope you can follow.

In part I, subclause 1(3)(i.1)(iii), the bill states that the average length of occupancy of the occupants does not exceed six months. It's our experience that six months is not a reasonable length of time for someone to gain the skills necessary to successfully prepare them to move to permanent accommodation. We have found over the 11 years that it has taken individuals an average of 2.4 years in order to make the personal gains required to be able to live on one's own.

Our opinion, further, is that setting a hard-and-fast time limit would be counterproductive to the goals of rehabilitative programs. We recommend that the length of stay be left flexible and based on the individual needs of each program participant.

Furthermore, we also recommend that the terms of residency be specified in a written service agreement prior to an applicant moving in, thus ensuring that there is a demonstrable understanding of the conditions of residency on both parts.

The next area of concern for Eden House refers to part I, subclause 1(3)(i.1)(ii) of Bill 120, where it states that in order for the program to be exempted from the Landlord and Tenant Act, the building in which the accommodation is located is not the principal residence of the majority of the occupants.

For the individuals living in Eden House, 1 Hillholm Road is their principal residence. These folks do not have any other residence from which they operate or that they may return to once they are ready to leave our program. Staff assist residents to apply to other permanent housing organizations or locations when they're ready to move on; this is part of discharge planning. For this reason, this criterion is a problem for us as it would not exempt our program from the act.

We recommend that you consider changing the wording from "principal residence" to "permanent residence." This would then recognize that a rehabilitative program is a transitional program, that is, a step on the way to independent living.

1540

The third proposed amendment I would like to provide comment on is part I, clause 1(2)(a.1), which states that the definition of "residential premises" be "any premises occupied or intended to be occupied by a person for the purpose of receiving care services, whether or not receiving the services is the primary purpose of the occupancy."

The primary purpose of occupancy for residents of Eden House is rehabilitation. Individuals come into our program for a period of time to work on rehabilitative goals for housing as well as other community skills. The sole reason for existence of programs such as Eden House is to prepare or rehabilitate, if you will, people for future permanent accommodation and improved quality of life. In fact our principal funding source, the Ministry of Health, evaluates our program based on our rehabilitation outcomes, or the gains people make over the course of their stay with us.

If Eden House were to be included in the Landlord and Tenant Act, individuals could indicate a desire to take

part in our rehabilitation program but, in reality, choose not to. Such persons could then rely on the protection afforded under the act regarding eviction. The result would be that he or she would then take up a space for someone else who truly wished to work on their rehabilitative goals.

You can see that with repetition, this process could severely diminish opportunities for this critical service option for the severely mentally ill. Any reduction of rehabilitative services at this time will have a profound effect on those individuals being successfully served in our program as well as the individuals on our waiting list who wish to participate.

Eden House is a member agency of the Ontario Federation of Community Mental Health and Addiction Programs, and we also endorse the federation's response, which we understand it will be making before this committee on February 2.

We support the principle that for programs whose primary purpose is rehabilitation across the province, they should be exempt from the act and that criteria should be developed to protect individuals against arbitrary eviction and other abuses.

In conclusion, we believe that the inclusion of Eden House under the Landlord and Tenant Act would be disadvantageous to our ongoing ability to maintain the quality of service that we have provided over the past 11 years. These rigid criteria and prescribed practices will curtail our ability to continue serving persons with severe mental illnesses rather than allow us to improve the services provided.

On behalf of the residents of Eden House, the staff and the board of directors, I thank you for this opportunity to address what we believe are critical issues for those we serve. I will attempt to answer any questions with regard to Eden Community House of Toronto.

I'll just draw your attention to two attachments. One is a summary of the recommendations—

Ms Susan Carr: That's not an attachment. This was faxed this morning.

Mr Shaw: Okay. So there aren't copies of this?

Ms Susan Carr: No, that's being faxed.

Mr Shaw: Okay. There is one other attachment, which is a statement from one of the residents at Eden House. Copies of that are being faxed to the committee.

Mr Cordiano: Thank you for your fulsome presentation. You've covered all of the basic issues that I think are the focus of what is wrong with Bill 120, the section that deals with Dr Lightman's recommendations. I could go on to say that of course Bill 120 itself is a problem, given that you have two disparate pieces of legislation put together for the purposes of this omnibus legislation. That's an argument for when the minister is here.

But I agree with a number of items you put forward for consideration for amendment, and it's frustrating—I don't know if you were here for the group before the professor from the University of Toronto—

Mr Shaw: No, I wasn't.

Mr Cordiano: —but many of the same points were

made by that group, Anglican Houses. I'm hearing the same story. It's becoming quite repetitive with respect to what's wrong. The major problem areas you've highlighted in your report are what's wrong with Bill 120, and I certainly hope that the minister is prepared to not only listen but make changes to the legislation.

There was concern by other groups with respect to fast-track evictions. That's not an area that you touched on in your brief. Do you have any opinions on that?

Mr Shaw: I have to say I don't know what you mean by fast-track evictions.

Mr Cordiano: Under the Landlord and Tenant Act you need to go through the process that's in place, and it could be quite cumbersome to evict a tenant. There has to be notice. You go through a pretty rigorous process.

Mr Shaw: Yes. Right, okay.

Mr Cordiano: Would that be a problem for your organization if you had to use the provisions of the Landlord and Tenant Act to evict someone?

Mr Shaw: Yes.

Mr Cordiano: Okay. That's another area that obviously you hadn't highlighted in your report, but certainly that would be something for you to consider, because there is no way of dealing with tenants in that fashion, someone who was a danger to other tenants, or a danger to himself for that matter.

The minister says, "Call the cops. They'll deal with it," which is essentially what I think was said to another group by the minister. "Call the police. They'll deal with it." That's certainly not going to be satisfactory for groups such as yourselves. You already have ways of dealing with those kinds of situations, I would imagine, that are satisfactory to you.

Mr Shaw: That seem to be working, yes.

Mr Steven Offer (Mississauga North): I'm not a member of this committee on the normal basis. I'm here just for today and I've now heard four presentations, including one from Metro Agencies Representatives' Council, one from Anglican Houses and yourselves.

Three of the four touched on the same point with the same concerns and helped this committee out, you who are professionals in the area, by also suggesting how those concerns can be met. I must say that, though I've just been here today, I have heard a certain reluctance on the part of government members to listen to the concerns of the experts in the field in the real world. Even now I see the members of the government tittering over a very important concern.

Mr David Winner (London South): Now you're being provocative.

Mr Offer: If the government continues to refuse to listen to the people who are working in the field, what are the ramifications, the impact, if the changes you have made and Metro Agencies Representatives' Council and Anglican Houses have made don't take place?

Mr Shaw: In general terms, it restricts our ability to provide high-quality service. The example referred to in the report is the fact that we become restricted in our ability to deal with people we are having difficulty

serving. Fast-track eviction, to me, sounds like it has potential, but as I say, I don't know very much about that. But any opportunity we have that is curtailed to be able to move someone into a program that is going to serve their needs better is going to be difficult for us to abide by.

1550

Mr Cordiano: Did the minister consult with you directly about the proposed Bill 120?

Mr Shaw: Not that I'm aware of; I don't believe so.

Mr David Johnson: Congratulations on a very thoughtful deputation with some good suggestions. Obviously you're doing good work; keep it up.

I wondered if any of the residents of the Eden Community House would have been people who had been involved with drug or alcohol abuse in the past.

Ms Susan Carr: That's not our primary focus. Our focus is strictly severe and persistent mental illness.

Mr David Johnson: You're suggesting that if the primary purpose is rehabilitation, you should be excluded from the Landlord and Tenant Act. Is that easy to define, that the primary purpose is rehabilitation?

Mr Shaw: To define the purpose of the program?

Mr David Johnson: No. What you're saying makes a lot of sense. As has been indicated here earlier, there've been a number of deputations today and other days saying precisely the same sort of thing. I don't know if the government is reluctant to change this or not, but it hasn't come forward to this point and said, "We've heard the common sense and we're going to do this."

I'm just trying to think of how hard it may be to do this, to define a rehabilitation program. In your view, would it be easy to do that so that it would be quite easy to exempt? There may be people who say, "Oh, I run a rehabilitation program," or people who may want to take advantage of that definition to sneak in under a rehabilitation program so they're not subject to the Landlord and Tenant Act, people not as deserving as yourselves.

Ms Susan Carr: There are strict criteria under the Ministry of Health that define how programs are run. As is mentioned in here, it is the basis for how the Ministry of Health evaluates our programs. The Ministry of Health is evaluating the program based on the rehabilitation outcomes. I think that makes a fairly clear guideline for the Ministry of Housing to use in terms of Landlord and Tenant Act exemption.

Mr David Johnson: So that definition in effect exists today. Using that sort of definition, it would be quite easy then, in your view, to create an exemption.

Ms Susan Carr: Sure.

Mr David Johnson: Good. That sounds like a good way to do it then.

You talk about a written service agreement with your residents. I gather you have a written service agreement today, do you? If there was an insistence, notwithstanding the discussion we've just had, to go ahead with the Landlord and Tenant Act and make it apply in your case, which we agree would not make sense, there's been some discussion that a written service agreement might overrule

the Landlord and Tenant Act. Would that be your view?

Mr Shaw: If a written service agreement would be sufficient to exempt us from the act, I don't know why there would be a definition that would include time lines and some of the other things that are in there.

Mr David Johnson: It's my understanding that the Landlord and Tenant Act would take precedence—

Mr Shaw: Over the service agreement?

Mr David Johnson: Yes.

Mr Shaw: Oh, okay. I misunderstood you then.

Mr David Johnson: No, I left it open to see your reaction. But my understanding is that the Landlord and Tenant Act would be supreme and that you wouldn't be assisted by a written service agreement.

Mr Shaw: That would be a problem for us. The reason we're suggesting the written service agreement is that we recognize the fact that there needs to be something there that is going to protect individuals who are living in homes such as ours.

Mr David Johnson: Finally, you talk about—and another group this afternoon talked about the same thing—how if there was somebody who chose to come into your care but didn't take the care, but took up space and then said, "Look, I don't want to move. I like it here. This is where I want to stay. I'm invoking my rights under the Landlord and Tenant Act," that would be a problem for you and other institutions such as yours.

I'm only predicting a response. The response may be that they won't do this, this will happen in a blue moon, this will hardly ever happen, so why should we react to a situation that will happen very infrequently? I wondered if you would have any guidance to give us on how often this kind of situation might be encountered.

Mr Shaw: I don't know.

Ms Susan Carr: It's really hard to say.

Mr David Johnson: One response is that when you're looking at a 10-bed facility, if it happens once or twice, that cuts your capacity by 10% or 20%.

Ms Susan Carr: That's right.

Mr David Johnson: In talking to other providers, is this something that you think might come up?

Ms Susan Carr: It could very likely happen.

Mr Derek Fletcher (Guelph): Some of your concerns today have been addressed by other groups and I think that once these committee hearings are over we'll be able to go back over all of the presentations and see where changes are needed, if changes are needed.

What Mr Offer is trying to put into your mouth, that everyone is not listening, is not a fact. These hearings are going on for another couple of weeks, so we can't make amendments until we've heard what people have said.

As far as the fast-track evictions are concerned, suppose I was in your establishment and I was a troublemaker and without this bill, and you threw me out and I didn't think I was at fault so I wanted to appeal it. What would happen? Could I appeal your decision that you threw me out and I think you were wrong?

Ms Susan Carr: As part of our current membership

agreement that was mentioned in here, if you were a troublemaker you would be addressed by your peers living in the group, the people who set the rules by which they want to live and have an ongoing ability to make amendments and changes as they see fit.

Mr Fletcher: What if I thought it were a conspiracy?

Ms Susan Carr: It would be addressed by the resident group, not by the program.

Mr Fletcher: So if I were thrown out, I would not have an appeal of the group's decision to throw me out, and if I did have an appeal, where would I stay while I was appealing?

Ms Susan Carr: It would depend on the grounds for your appeal. If you were appealing because you thought there was some conspiracy or something like that, then we'd help you find alternative accommodations until the matter was settled.

Mr Fletcher: Or possibly I could be just out.

Ms Susan Carr: We don't put people out on the street.

Mr Fletcher: That's what I wanted to make sure of.

As far as the exemption criteria are concerned, could you tell me what criteria we would set for the exemption? Do you have a plan of criteria? I could have a house and rent it out to 15 people, if I wanted to, and say it was rehabilitative, using my own criteria, and be exempt under this legislation. What criteria are we looking at? I'm trying to be specific, because I'm not sure what we should use.

Mr Shaw: Our report outlines some of the criteria we would like to see used. I think a lot of it hinges on the written service agreement and to ensure that there are points to be covered within that agreement that are going to be acceptable to the Ministry of Health, which is our primary funding source around that.

Mr Fletcher: Have you presented to the ministry in writing or any other way draft criteria?

Mr Shaw: No, we have not.

Mr Fletcher: It would be nice if you would do that. Then we'd have it. It would be exciting to see that.

I'm just going through your list. The length of stay must be flexible. I can agree with that. But from "principal" to "permanent"? What is "permanent"? I've lived in a house for 15 years and I move. Is that permanency? Do we set a time limit on permanent; instead of six months we would say 12 months?

Mr Shaw: The concern of the use, as I understand it, is that there is a ramification around the use of the term "principal residence" as it interacts with family benefits. As I said in the report, the way it reads, it's as though these people live somewhere else and come in here for programming. In fact, they do not live someplace else; they live where they are at 1 Hillholm Road for the time they're there. That's why we use the term "permanent residence" for the want of another term.

Mr Fletcher: It's just a little vague on the permanency part.

The Vice-Chair: Thank you for appearing. As you know, we will have clause-by-clause consideration on

March 7. I'm sure the committee will take your comments under careful consideration.

Mr Offer: On a point of order, Mr Chair: I've heard this afternoon reference to a service agreement and agreements of that kind. I'm wondering if ministry officials might be able to help. Upon passage of Bill 120 in its current form, would that make all existing service agreements illegal?

The Vice-Chair: That's really a question for ministry officials. Perhaps if we have time later on, with the agreement of the parliamentary assistant, we might have the officials answer that.

1600

ONTARIO ADVOCACY COALITION

Miss Patti Bregman: I'm Patti Bregman. I'm a lawyer at ARCH, but I'm here as a member of the Ontario Advocacy Coalition. With me are Mae Harmon, co-chair of the coalition, Orville Endicott, and Shoshannah Benmosché, who will read sections of our brief. She will not go through the entire brief for time reasons.

I want to remind everyone here that the fundamental message behind this legislation that I want you to keep in mind when you're thinking about it is that everybody has a right to have a home they can consider permanent. The fact that you have a disability should not suddenly mean that you don't have the same entitlement anyone else does. This legislation is about making a home a true home and residence.

Ms Shoshannah Benmosché: The Ontario Advocacy Coalition started in 1986. Its purpose was to convince the government of Ontario to enact legislation establishing an independent, fully funded advocacy system for vulnerable people. The coalition is still actively working towards the implementation of the Advocacy Act to ensure that the legislation is translated into reality for those who have endured abuse, neglect, exploitation and marginalization for so long. There are 40 member organizations, representing a wide range of disability groups and seniors throughout the province. A list of the member groups is attached.

Although this legislation is not directly related to the Advocacy Act, we have been following Dr Lightman's work and report very closely. We urge the government to carry out his recommendations as they have a direct impact on our members. In fact, you heard from one of our member groups, Citizen Advocacy Windsor, in Windsor last week. They have been active in providing advocacy services to tenants living at the ALPHA apartments for living for the physically handicapped.

Bill 120 extends protection to the same constituency served by the Advocacy Act, the most vulnerable people in the province. It should be noted that the recommendations of the inquest into the death of Joseph Kendall which led directly to the appointment of Dr Lightman were also the final impetus for the enactment of the Advocacy Act. The proposed amendments to the Landlord and Tenant Act and related legislation will give equal protection to all tenants without discrimination. It will increase the ability of advocates to effectively help their clients.

The advocacy coalition strongly supports the proposed amendments in Bill 120 with the respect to those relating to the Landlord and Tenant Act, the Rent Control Act, the Rental Housing Protection Act, and those designed to legalize basement apartments. These amendments eliminate the discrimination against people with disabilities and seniors that now exists. All tenants will now have the same right to secure and safe housing.

The exemptions from the protection in part IV of the Landlord and Tenant Act for housing where care is provided mean that housing intended as independent living to an institution in the community—

Miss Bregman: My mistake. It should be “is now.”

Ms Benmosché: Is now provided? I don't know where the “is now” goes. Sorry; I'm going on automatic pilot.

It is undeniable that many people with disabilities need assistance such as attendant care to live in the community. However, the need for assistance with physical activities should not deprive an individual of the right to secure housing. Without the protection of part IV of the Landlord and Tenant Act, tenants with disabilities and seniors have faced harassment, coercion and, in some cases, abuse by landlords. Both the tenants and landlords are aware of the fact that tenants can be evicted at will for failure to comply with unreasonable rules that often have little to do with housing. For example, one lease prohibits tenants from speaking negatively about the housing provider to anyone but the provider. This is grounds for eviction.

There is consensus among experts in the health and social services fields that secure housing is a fundamental requirement for healthy living. It is difficult for anyone to maintain a job, social networks and supports and any degree of normalcy if every day they wonder whether they will be evicted and on the street that night. We know of people who have chosen not to seek short-term medical or psychiatric assistance requiring hospitalization because the last time they returned home, their belongings were on the front porch and they no longer had an apartment.

Currently, many tenants living in housing where care is provided are afraid to challenge decisions by the landlord-care provider with respect to any aspect of their care or housing because of fear of eviction. Many of our member groups report knowing people who have been evicted because they were considered troublemakers by the landlord or seeking to enforce their rights. For example, one tenant was told he should not contact the fire inspector directly when the landlord failed to fix a safety hazard in his apartment.

In addition, it also empowers the tenants and advocates to form tenant associations and seek changes to benefit all the tenants in the building. Many tenants are now either afraid to join tenant associations because of threats by providers that they will be subject to eviction or, in other cases, the housing provider will allow a tenant association but require that the staff of the provider run the association. With this bill, tenants can form associations freely to represent their interests.

There is nothing about people with disabilities or seniors that justifies depriving them of the same rights that other tenants in this province have. Providing care does not interfere with the ability of a landlord to operate effectively under the Landlord and Tenant Act. This is clear from the fact that there are housing and service providers who have voluntarily agreed to provide Landlord and Tenant Act protection to their tenants without any disruption to the programs.

These include some of the largest landlord-service providers in the province such as the Ontario March of Dimes, Cheshire Homes Foundation and the Handicapped Action Group Inc, HAGI, in Thunder Bay. They have voluntarily agreed to provide part IV rights to tenants while still providing care. There is no reason that any other housing provider in the province cannot do the same.

The long-term care reform proposed by the province favours community-based services with consumer-controlled boards. These services, however, will be meaningless to tenants with disabilities and seniors if they are constantly required to move because they lack any security of tenure.

We strongly support the provisions of Bill 120 that would legalize basement apartments across the province. We urge the government to also include the legalization of garden suites in this legislation. The advantages of both types of accommodation are discussed below.

As we noted above, there is a shortage of affordable and accessible housing for people with disabilities and seniors. Both groups are also highly reliant on informal support services provided by family and friends. Even where services such as attendants are used, the informal support and social networks are beneficial to everyone. Allowing legalized basement apartments and garden suites will provide a welcomed option for seniors and people with disabilities who want to maintain their independence while living closely enough to their social support networks. It is an ideal situation for seniors who want to live near their children but do not want to displace their children's families, and for people with disabilities who want to live independently but still need and want family assistance. By legalizing these apartments and garden suites and setting safety standards, tenants can be assured that their living quarters are safe. Now, many people are afraid to complain about unsafe conditions because they may be evicted if the apartment is illegal.

1610

While the amendments in Bill 120 relating to the price of services are a step forward, we do urge the government to closely monitor the price of services and take any necessary steps to control them. We are very concerned about the possibility of economic evictions despite the provisions that prevent eviction for non-payment of the service component. A Small Claims Court judgement against a tenant for the service component can jeopardize their tenancy by depleting their finances to the extent that they can no longer afford the rent.

For the same reason that we would like to see stronger price controls in place, allowing landlords to require

tenants to purchase mandatory services may force them to leave their apartments or prevent them from moving into other apartments. Landlords who are not currently providing services may use this provision as a means of skirting rent control provisions.

While we strongly support Bill 120, we are also concerned that the government move forward as quickly as possible on implementing those recommendations made by Professor Lightman with respect to rights relating to services. We understand that these recommendations have been referred to the long-term care division for review and implementation. This is appropriate, as many of the issues are being dealt with in the context of long-term care. However, we want to stress that the implementation of these recommendations is as important as the ones in Bill 120. Until the entire package has been implemented, vulnerable people will still be at risk. This legislation should be passed as quickly as possible to ensure that the most vulnerable tenants in Ontario are no longer subject to abuse and harassment in their own housing and to promote true independent living by people with disabilities and seniors.

Mrs Marland: I notice in the list of member organizations of the Ontario Advocacy Coalition a number of organizations that have, either directly or indirectly through association with some other groups, made presentations to this committee. I'm thinking particularly of the Canadian Mental Health Association. Some of the concerns they have identified you have not identified today. They were not 100% in favour of the bill as it's presently drafted because of the tenure aspects and some of the things we've heard earlier—I don't know how long you've been here this afternoon—the six months and those areas. Is there a reason that although you're speaking on behalf of some of these same groups which have concerns about the bill, you have chosen not to share the same concerns?

Miss Bregman: We chose not to for a couple of reasons. One is that there are some different perspectives in the community, which we recognize. CMHA is a service provider. The advocacy coalition was formed primarily for consumers and the community. While they're a member and we want their support, we may not always agree.

We did not raise some of the issues. Fast-track eviction is one about which there has been some discussion, and what the coalition decided is that our position is that if you feel there's justification for fast-track eviction, it must be applied to every single tenant in the province. There's absolutely nothing about people living where care is provided that makes it necessary to have fast-track eviction for one constituency and not for another. If you use fast-track to deal with domestic violence or anything else, fine, that's your policy decision, but you can't limit a fast-track eviction to only one constituency. There are just no data. If you talk to people from Supportive Housing Coalition, they'll tell you that in five years they've never had to evict anybody quickly.

Mrs Marland: Most of your comments have dealt with that portion of Bill 120 which was originally under Bill 90. I'm wondering if you would like to make some

comments on that part of Bill 120 which pertains to the housing aspect. You've said you're concerned that the Lightman recommendations have been referred, for goodness knows how long, to the long-term care division. We've heard from a number of people that some of the very specific recommendations of Dr Lightman—MARC said earlier this afternoon that a distinction must be made in terms of who it is we're talking about; that while we protect vulnerable people, we not absolutely ruin existing programs the success of which is based on the premise that people do move out and other people move in and have those opportunities. When I look at the member list of your Ontario Advocacy Coalition, I know some of those organizations are very concerned about that aspect of retirement and rest homes that comes under Bill 120.

Miss Bregman: I'm not entirely clear on what you're asking.

Mrs Marland: The organizations you have listed as part of your coalition have said in phone calls and correspondence to me that they are concerned about the part of Bill 120 that deals with the accommodation, the portion of this legislation that deals with retirement and rest homes. And of course they've also said these are two major issues that require individual legislation anyway, instead of being lumped together with basement apartments. But their concern has been very clear, and it's been very clear in their presentations to this committee that while the bill addresses some of their concerns, it also creates concerns for them.

Not only that, but it doesn't do anything about their care. It only does something about tenancy. For a lot of these organizations, and I'm thinking of ARCH and PUSH especially, because they are groups I interact with all the time, and the head injury associations across the province and so forth—what floors me this afternoon is that you're 100% for the bill except at the very end where you talk about some of the Lightman recommendations. I am saying to you that that's not what a lot of these organizations have been telling me.

Miss Bregman: What I've heard from some relates to very narrow areas. To be honest, we didn't deal with them in part because we dealt with areas where we had consensus. I can't speak for them and I'm not trying to. As far as the care component goes, though, the concern is that yes, you need to deal with certain areas in care and service contracts. Landlord and tenant legislation is not appropriate, but it is appropriate to deal with the issue of security of tenure. This is, fundamentally, housing. This is not an institution in the community. That's the line that is being drawn. If the government wants to set up institutions in the community, they can certainly do that, but we need to recognize that more and more people are living independently and this is their home.

Mrs Marland: So what you've clarified is that in terms of the organizations that are part of your coalition, there isn't necessarily consensus on Bill 120 as it's drafted. You've addressed in your presentation this afternoon those areas on which there were consensus. So when we hear from these other groups that don't agree with Bill 120, we can accept the credibility of their presentations?

Mr Orville Endicott: I think you certainly have to accept the credibility of people who appear before you.

Mrs Marland: We do.

Mr Endicott: We have certainly not had any serious disagreements around the coalition table. Sometimes service provider members of the coalition defer to the consumer-survivor and senior elements in the coalition.

Mr Owens: I'd like to concentrate on the substance of the legislation. My comments are with respect to some of the issues we've heard around exemptions and fast-track eviction proceedings.

I find your comments quite interesting with respect to the application across the board, that in your experience with supportive housing you have never seen the necessity to have fast-track eviction proceedings. I appreciate those comments. I contrast your comments with some of the folks from the for-profit rest homes and care homes who say, "We've got to have a way to get these people out, and if we pass this bill it's going to be the worst thing since the slicing machine broke in the bakery so we couldn't slice the bread any more." Can you expand a little more on the fast-track eviction process?

Miss Bregman: I have to say I'm not a landlord and tenant expert, although I've learned quite a bit in recent months. There are mechanisms under the existing Landlord and Tenant Act right now to deal with tenants who cause damage, who have threats. You can get people out quickly. One of the problems is a lack of court time; it sometimes takes time. I was just at a legal clinic meeting of clinic lawyers dealing with a number of issues, and they can tell you there are landlord reps who can get people out in 48 hours. What it takes is the landlord really understanding the law.

I've heard the arguments raised for fast-track eviction by a number of people. It's something we've looked at, and possibly somebody could convince us that in general the landlord and tenant system needs fast-track eviction. I don't accept that, but there are arguments being made. Our position really is that there's nothing distinct about this population that says you need to have it for this constituency. There are people living in shared accommodation. There are people where you have domestic violence, drugs in a family. Simply because somebody also happens to have a disability or be a senior and needs some support should not change their rights under the Landlord and Tenant Act. There are ways now under the Mental Health Act of dealing with things, under the new substitute decision legislation. We have remedies that are not being effectively used.

1620

Our argument is simply that there's just absolutely no justification for discriminating against people with disabilities and seniors, that they are any more violent, any more difficult. That's essentially what it would be: discrimination against one segment of society. Unless somebody shows me something that says we have a really good public policy reason for picking out this group as opposed to the population at large, it just doesn't fit, and I don't think anybody's willing to say we need to go to fast-track eviction for the entire population.

Mr Owens: As consumer advocates, do you see a necessity to grant exemptions to those homes providing care or rehabilitation? If you agree that this is a sometimes needed issue, how would you go about doing that in terms of protecting the interests of the tenant? My view is that we already have that fast-track eviction process and that's what brought us here under Bill 120. In terms of places like the Massey Centre or some of the group homes under the Metropolitan Toronto Association for Community Living, how would you do something like that without inviting a holus-bolus application?

Miss Bregman: It has to be an extremely limited exemption, and I think the legislation deals with it relatively well. We were involved in discussions ahead of time. You're limiting by: Do they live somewhere else? Is it a very specific, targeted place? There are transitional programs that people stay in for three years. To me, that's a home. That's not a sort of narrow: "I broke my leg. I need to live somewhere where they can provide me with services, then I'm going out again." We do need to deal with service contract issues in terms of terminating services, which will also help, but I don't think you deal with them under this legislation. I think there is a very natural divide.

We have to make sure we keep the restrictions as narrow as possible and preferably would have a way to review it or challenge. In other words, there has to be a way to say: "This provider is saying we do this. How do we prove that's happening?"

Mr Cordiano: Let me be clear about one thing. Our party would support the thrust of Dr Lightman's recommendations and support the general view that the Landlord and Tenant Act should be applied to these living accommodations for people in these centres.

To go back to this fast-track eviction question, the problem I'm having is that I think what's being overlooked in the discussion is that where it is a problem for these operators such as Anglican Houses, which was here, and many others who have come before us expressing their concern is in the area of congregate living accommodations, where there are shared washrooms, shared kitchens, where people are living physically very close to each other and have to see each other, where they can't go into a self-contained unit and lock the door and call for emergency help if someone gets out of control.

If someone does get out of control in those shared, congregate living accommodations, the operators, the people on the front lines, are saying that there have been many instances where one tenant is a very serious threat to other tenants and they need to do something very quickly. This legislation would preclude them from taking swift action, would make it virtually impossible. You disagree with that.

Miss Bregman: I disagree entirely. This legislation does nothing to prevent them from calling the police, from using the Mental Health Act, from calling substitute decisions or getting a landlord's agent and going to court pretty quickly and using the existing landlord and tenant provisions.

My response is, if you can show there really is that problem, are you prepared to say all congregate living;

not just congregate living where care is provided but every single congregate living environment? In other words, if your son is sharing a house with four other people, that would have to apply. You can't justify it. There's absolutely no evidence that because you need care, you're more likely to go out of control; in fact, you may arguably be less.

Mr Cordiano: There's also the question that when care is being provided, you need to separate the accommodation question from the provision of care services. At the end of the day, someone who is a tenant who refuses to pay for the services they've been provided would not be able to be evicted for lack of payment, that as long as they paid the rent portion, the Landlord and Tenant Act would be silent on that question. I see that as a problem that isn't resolved, is left wide open for this area. That is a question. It's an interrogative statement.

Ms Benmosché: I happen to be a landlord and I have separated the utilities from the provision of space. If my tenants decide to put in a 12-volt battery system to run their apartment instead of buying from Ontario Hydro, they are perfectly at liberty to do that. I do not require my tenants to purchase a service provided to my buildings.

Mr Cordiano: We're talking about one human being providing care to another. It's very difficult to make that kind of distinction in those circumstances.

1630

Miss Bregman: But it also goes to the issue of both the mandatory services and what the implications are. All too often we have been involved in cases where the landlord has used that separation of services as a way of evicting people. I have been told by landlords: "I don't like this guy. I'm going to keep the rent portion low and increase the care part, because I know that person can't afford it."

Mr Cordiano: But that was before this bill, where the Landlord and Tenant Act did not apply. After this bill, the Landlord and Tenant Act will apply.

Miss Bregman: Except that you can still make it so unaffordable. If you can continue to get Small Claims Court judgements against people, chances are—there's a lot of concern that this really doesn't go far enough in protecting from economic eviction. But the landlord can also choose not to have mandatory services, can choose to stop providing the services.

Mr Cordiano: I think there's a fundamental ideological difference.

Mr Offer: I'd like to get a response to this concern I have. I have heard today from the service providers that unless changes are made to Bill 120, service to people in need will be affected. As consumer advocates, your function is to make sure that service to the people is not adversely affected. Do you have a concern that the issues raised by the service providers will not be addressed by change to Bill 120?

Miss Bregman: I'm concerned that the service providers will use this as an excuse, as they have in various other cases, not to do certain things. We've spent a lot of time talking to service providers. We mentioned

in the brief that the March of Dimes, Cheshire Homes, and OACL have been very supportive, although I'm not sure what position they've taken in full—

Mrs Marland: But they're not supporting the bill.

Miss Bregman: I've had dealings with them and they are supportive of some parts. We have talked to service providers who are currently able to do this. I have talked to service providers who say they can't, and when I sit down and ask, "Tell me why," they can't come up with anything. Yes, I'm concerned they will have problems; not because of this bill, though. They think this will suddenly change the world for them, but when you sit down and you put it to them, they can't come up with anything.

The Vice-Chair: Thank you very much for your presentation. As you can see, it's a topic for lively discussion. I don't think we're going to solve all the questions today. Nevertheless, we appreciate your presence. As you know, clause-by-clause will be in the week of March 7.

Mr Mammoliti: Mr Chair, may I take two minutes before the next presenters to ask the committee for unanimous consent to extend the deadline for written submissions? I understand a flurry of people want the deadline extended, and I'm asking the committee for unanimous consent.

The Vice-Chair: I certainly will put that question to the committee, but in fairness to the Conservative caucus perhaps we should have someone—

Mr Mammoliti: You're absolutely right.

The Vice-Chair: You can ask again a little later. In the meantime, Mr Wilson, Mr Offer earlier asked a question of the ministry officials. Will we be getting an answer?

Mr Gary Wilson: Do you want it now?

The Vice-Chair: With the agreement of the committee, could we take a few minutes for that answer?

Mr Winner: Why are we doing it now?

The Vice-Chair: You don't want it right now?

Mr Gary Wilson: Not now.

The Vice-Chair: Mr Offer, is it okay with you that this will be given later on? I don't think you'll be here tomorrow.

Mr Cordiano: We don't want it now. To be courteous to the presenters, I really don't think we should—

The Vice-Chair: Okay, we'll do it either at the end of the day or tomorrow.

CANADIAN ASSOCIATION OF RETIRED PERSONS

The Vice-Chair: The final presentation this afternoon is from the Canadian Association of Retired Persons, Lillian Morgenthau.

Mrs Lillian Morgenthau: I don't know how many of you are acquainted with the Canadian Association of Retired Persons. It is a national association of approximately 180,000. Many of our people, about 90,000, are in Ontario. It is an association to improve the quality of life of people over 50. This bill has come to our attention. We do a lot of briefs and a lot of lobbying. We

have some very grave concerns about this particular bill.

It's our perception that this whole bill came about to protect vulnerable adults in small, independent housing where a care component was part of the operation; for example, assistance with bathing, dressing, meals and medication. Certainly this kind of regulation and protection is a significant step in the right direction. The Canadian Association of Retired Persons feels, however, that this bill is too restrictive. It is full of bureaucracy input without offering incentives to accommodate a future which will be filled with the baby-boomer bulge in a few short years.

This upcoming group will require a range of long-term living and care facilities, especially in view of the longer living span we are experiencing. It should be noted that more than 30,000 North Americans are over 100 years of age. Bill 120, while seeking to protect vulnerable adults on one hand, is using a hammer to deal with a small portion of the population. Actually, a carrot is needed to meet the future demand of a burgeoning older population.

With this bill, how does the government see the housing facilities in the next decade? Does this government have a hidden agenda? Is its intention to eliminate the private sector in favour of Big Brother?

CARP does not favour any institution. However, we have observed that private development becomes zero development when bureaucracy takes over. This country was built by pioneers whose initiative and vision opened up this country we all love. This bill does not encourage creative, independent thinking in meeting the diverse needs of the older population.

In a time of shrinking public resources, it is not wise to restrain or inhibit private initiative which can and does do the job of looking after present and future needs that supplement government facilities. There is no doubt that abuse exists in rental accommodation. However, this abuse is also present in government-run institutions.

We wish to emphasize that this bill will really help in smaller facilities, but it covers facilities not really meant in the Lightman report. This bill will also stymie growth of large facilities and may well result in the closing of present establishments, and this would be disaster. As the number of long-term care facilities become scarcer, both by closures and lack of future development, a growing elderly and special-needs population will find itself deserted and left to scrounge for the too few government facilities. We cannot depend on Big Brother to meet and fulfil our long-term care needs. Different priorities compete for the government dollar, and CARP feels seniors will be at the bottom of the money ladder.

This bill's aim is to see that tenants, as they will be regarded, will reside in a safe environment, but it does not address the issue of practicality and the issue of care. Let us be open and frank. You cannot expect operators to maintain all Bill 120 standards and operate at a loss. Even not-for-profit facilities have to meet expenses, including union salaries. Obviously, if there is no profit, there will be no facility.

The public deficit is making it impossible for government to continue to find enough money from public

revenue to support the needed care facilities properly. Standards will break down if we don't look at practicality and reality. The public purse is too small, and we must encourage the private sector to develop this area. This bill, as presently drafted, will discourage much-needed development. We ask you to go back to the drawing board and make this bill more particular to those smaller facilities accommodating approximately 10 people.

We foresee that if this bill passes in its present form, it will create the opposite effect from its intention. If we don't recognize the technological changes taking place that can benefit our mature population, it will stagnate at the present level and be incapable of offering the quality of life that new technology will bring to alleviate pain and ameliorate living conditions. New buildings, new residences with modern technology, are essential to the future baby-boomer bulge. This bill will kill the impetus to create these new facilities.

CARP asks you to encourage growth and not stifle it. We ask that Bill 120 be redrafted to protect those in smaller units, which the Lightman inquiry addressed, and that a separate consultation process be developed for the larger, modern facilities. Proper supervision can be designed to protect the tenants.

1640

To force this discussion, I attended a meeting of the board of CMHC this morning, the seniors' advisory council, on which I sit. The legion, the military legion, was there. They told us straight out that they had a discussion about the bill yesterday with someone from government, and they are cutting out their care facilities. They cannot cope with what this bill is going to do to them.

The intent of this bill is certainly laudable. The forcing of it into this particular area will destroy a lot of good residential living. We just finished a focus group of three different types of people: the property managers, because the particular subcommittee I chair wanted to see if we could seniorize some of the high-rise apartment buildings around the city where people have lived for decades. Perhaps when they moved in they didn't think they'd stay there, but they've been there 30 years. They have aged, the buildings have aged, but the place they live in cannot really accommodate what's happened to them. So we were discussing how we could seniorize some of these apartments, and when we were talking about these things and about Bill 120, it would be opposites for them to have to do these things with the landlords, because they just wouldn't do it.

In Bill 120, you're talking about the Abbeyfield concept where six or eight or 10 people live and have put together a home. If you set this kind of standard, that will have to go out of business. I know the basic thought about Bill 120 is to do away with the abuse, and that's laudable, but I think there would be tremendous abuse if we forced all these to close. This government is not prepared to absorb the upcoming bulge and the people who are already in these extended facilities. That's our position.

Mr Winner: You'll forgive me. I'm a bit confused. Maybe you can help me in through questions and answers.

Mrs Morgenthau: If I'm not confused myself.

Mr Winninger: I assume from your presentation that you are dealing with the Lightman part of Bill 120.

Mrs Morgenthau: No, I'm dealing with the bill itself.

Mr Winninger: Apartments in houses as well?

Mrs Morgenthau: Yes.

Mr Winninger: Okay. Then first of all, we did hear Professor Lightman earlier in these proceedings, and he said that abuse, neglect and exploitation runs from the common boarding house right up to affluent retirement homes and care homes. He didn't draw any arbitrary lines between small boarding houses of 10 people and some of the larger facilities, as you have. He found that the problem was prevalent throughout. I'm wondering how you would go about protecting these people if you were to limit the legislation in the manner you suggest.

Mrs Morgenthau: Very simple. Even if you do give this bill its okay, you will still have to have supervisors, you will still have to have people who will go from one place to another to check up. These people can do it without closing down facilities that are now available. Abuse is there, but let's not fog our eyes and say everything is being abused. It's not true. There is some abuse, but there are plenty who are being taken care of and who are being cared for in the community they live in.

Mr Winninger: Is the extension of the Landlord and Tenant Act, the Rental Housing Protection Act and the Rent Control Act to these kinds of facilities going to close them down?

Mrs Morgenthau: We'll find out, won't we? And then it'll be too late.

Mr Winninger: I suppose we will. There seemed to be a theme running through your presentation that Bill 120 will somehow diminish private investment and that the government can't meet that vacuum. Isn't allowing as-of-right conversion for one apartment in a house going to stimulate the private sector—create jobs in renovation—and also allow home owners on a private basis to create affordable housing for people who need it? I'm curious why you see that as somehow impeding private investment.

Mrs Morgenthau: If I were a person with a home and I had facilities to rent and I put in x number of dollars to make this acceptable to the Landlord and Tenant Act and the facilities, as far as I could see, were acceptable to someone who moved in a year or two ago—I have no one in my house—and I were subject to all the rules of the Landlord and Tenant Act, if I didn't get along with my tenant and he was abusing the part of the house he was in, I could not get him out.

Mr Winninger: But that's the case now.

Mrs Morgenthau: Yes, but it's not the case if you rent to one person. It's not an apartment. What we're saying is that this act goes too far.

We see it very simply: How many new apartment buildings have been built that were not subsidized or non-profit since the Landlord and Tenant Act has come in?

Mr Mammoliti: I need to disagree with you about the provisions you said are not in the Landlord and Tenant

Act to get rid of tenants who perhaps are destroying the place. I think the language in there is quite clear on landlords taking action about tenants who destroy the place, or don't keep it clean, for that matter.

Mrs Morgenthau: I have in our office letters from so many people who have had tenants and not been able to get them out. I'm sure you know that too. It's in there, but try and get them out.

Mr Mammoliti: You're absolutely right; I have a hundred letters as well. But what is very consistent—

The Vice-Chair: Mr Mammoliti, you asked the witness a question. Please have the courtesy to let her finish her remarks.

Mrs Morgenthau: It may be in writing, but try and get them out. First of all, it's very expensive. You have to get forms and a lawyer, and before you get through, anything you may have wanted to do to increase your income—especially with seniors. They need something to supplement their income, and if they want to live in their home and rent out part of their home, they don't have the money to go to lawyers and have these things done, and they don't have the knowledge—

Mr Mammoliti: But they have the choice. They have the choice of whether they want to rent out their basement apartment or granny flat or whether they don't. They have a choice as to whether they want to rent it out.

Mrs Morgenthau: Mr Mammoliti, it's obvious you're young.

Mr Mammoliti: Actually, I'm 65 years old.

Mrs Morgenthau: Then you should be a member of CARP. I'm not saying we don't need the young. I have four children your age.

I'm saying that when a senior who today has no income from interest coming in wants to supplement income and stay in their home and rent out part of it, they're the ones who are abused.

Mr Mammoliti: But it's illegal right now to do that. What would be your solution to what's happening out there now? They're illegal apartments. Would your solution be the status quo, to keep it the way it is?

Mrs Morgenthau: I gave a solution, if you had listened. I said that you have supervisors now looking over situations with abuse, but the social workers or coordinators right now are very few. If you're going to have this come into being, you will have to increase your staff. You will have to do things to take over all these homes and all these extended care. Rather than do that, why not hire these people to supervise? Give them the rules you feel will keep the people safe.

Like I said, the legion is already cutting out its care setup. They just are not going to have it. This is too restrictive. And they're not the only ones.

1650

Mr Cordiano: Did anyone in the ministry or the minister herself consult with your organization? Did anyone make any effort to consult you over Bill 120?

Mrs Morgenthau: I have this much stuff at home. As a matter of fact, I have a couple right in my case. We've had every single publication on Bill 120. This morning

we had a representative come and explain Bill 120.

Mr Cordiano: But did anyone consult with you before Bill 120 was brought forward and made public?

Mrs Morgenthau: No, which was too bad.

Mr Cordiano: Did you hear that, gentlemen? No one consulted. I just wanted to make sure, now that I have the floor and am asking questions. Perhaps there's a problem of hearing on that side.

Mrs Morgenthau: As a matter of fact, Mr Cordiano, I asked who was sitting on this panel and what the background had been. I was rather surprised, considering the large membership we have, that we were not asked to be part of the consulting.

Mr Cordiano: I am surprised too.

Mrs Morgenthau: Maybe it's because we don't take funding from the government and we say what we think. We're neutral.

Mr Cordiano: In your opinion, this bill will have a devastating effect on many of those institutions that provide care.

Mrs Morgenthau: Very adverse effects. We do a tremendous amount of work with abuse. I sit on a lot of those. I feel this bill is not apropos to this and I feel that a lot of our seniors will be adversely affected. One of the women who was at the focus group for tenants in the high-rise apartments has gotten four of her friends together and they have rented a house and are all going to live together. Under this bill, she will not be able to do that.

The Vice-Chair: No further questions from the Liberal caucus? Mrs Marland, I don't know whether you had an opportunity—

Mrs Marland: I'm sorry. I was continuing the previous deputation's discussion, so I didn't—

The Vice-Chair: Do you have any questions?

Mrs Marland: I don't.

Mrs Morgenthau: I'll have this Xeroxed and sent in to you. I'm very sorry; I didn't have time to Xerox it.

The Vice-Chair: That's fine. If you send it to the clerk, he will make sure to have it distributed to the members of the committee. Your presence is very much appreciated and we look forward to your written remarks. Thank you for your presentation.

Mr Mammoliti had a question earlier. As we have five minutes left, perhaps we can deal with the two outstanding items.

Mr Mammoliti: I wanted to try to get unanimous consent to deal with an issue that has come up. Apparently, there are people who want to give us written submissions and I understand that today is the deadline. I'd like to extend it a week if possible.

The Vice-Chair: Are you giving a particular date?

Mrs Marland: We're not going to get into clause-by-clause until March, so I would actually extend the deadline for written submissions to the end of February.

We'll still have a week to read them before we get into clause-by-clause.

The Vice-Chair: Is that agreeable to everybody? Agreed.

As to the question Mr Offer had raised earlier, I ask the parliamentary assistant, do you want some of the officials to respond?

Mr Gary Wilson: There's a bit of time, so why don't we ask Scott to come forward.

Mrs Morgenthau: There was one thing I wanted to ask.

The Vice-Chair: I'm sorry, we're now into another subject. If you have a question to the clerk—

Mrs Morgenthau: No. This is the magazine we put out. It says right there, "Wake up, Canada," and I think that's what we should be doing.

Mr Scott Harcourt: I'm Scott Harcourt from the Ministry of Housing. I believe the question had to do with the relationship between service contracts agencies have and provisions in the Landlord and Tenant Act.

Once the bill attains royal assent, any existing provisions in a contract which violate any terms in the Landlord and Tenant Act will no longer be applied. For example, if a service agreement applied for the turfing out, evicting of a tenant through arbitrary means other than the Landlord and Tenant Act, that would no longer be in effect under the Landlord and Tenant Act once it takes effect.

I talked to our legal people, and they were of the opinion that if there's a contract in existence at the time the Landlord and Tenant Act provisions are amended, they would no longer be in effect either.

Mr Offer: Are the provisions in the agreement joint and several? In other words, if there are some provisions that have been rendered illegal, does the whole agreement fall by the wayside?

Mr Harcourt: I'm not a lawyer, but my opinion is that probably not the whole agreement would be regarded as illegal but just those provisions which are illegal under the provisions of the Landlord and Tenant Act.

Mr Offer: It might be helpful for the committee in its deliberations, notwithstanding the opinion raised, that we get a precise answer, because there are many groups, certainly the ones I've heard today, which rely in no small measure on these types of agreements. They will want to know the status of those agreements come the proclamation of the bill, unless the government members listen to the service providers of the province and agree with the amendments that have been suggested.

Mr Gary Wilson: I think we can get a complete explanation of it, including the legal aspect.

The Vice-Chair: Thank you very much. This concludes the hearing for today. The meeting is adjourned until tomorrow morning at 10 o'clock.

The committee adjourned at 1658.

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**In attendance / présents*

Substitutions present/ Membres remplaçants présents:

 Cordiano, Joseph (Lawrence L) for Mr Sorbara

 Marland, Margaret (Mississauga South/-Sud PC) for Mr Arnott

 Mills, Gordon (Durham East/-Est ND) for Mr Morrow

 Offer, Steven (Mississauga North/-Nord L) for Mr Brown

 Owens, Stephen (Scarborough Centre ND) for Mr Dadamo

 Wilson, Gary, (Kingston and The Islands/Kingston et Les Iles ND) for Mr Wessenger

 Winninger, David (London South/-Sud ND) for Mr White

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Clerk / Greffier: Carrozza, Franco

Staff / Personnel: Richmond, Jerry, research officer, Legislative Research Service

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Standing committee on
general government

Residents' Rights Act, 1993

Comité permanent des
affaires gouvernementales

Loi de 1993 modifiant des lois
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STANDING COMMITTEE ON GENERAL GOVERNMENT

Tuesday 1 February 1994

The committee met at 1004 in the Humber Room, Macdonald Block, Toronto.

RESIDENTS' RIGHTS ACT, 1993
LOI DE 1993 MODIFIANT DES LOIS
EN CE QUI CONCERNE
LES IMMEUBLES D'HABITATION

Consideration of Bill 120, An Act to amend certain statutes concerning residential property / Projet de loi 120, Loi modifiant certaines lois en ce qui concerne les immeubles d'habitation.

SOUTH ETOBICOKE
COMMUNITY LEGAL SERVICES

The Chair (Mr Michael A. Brown): The first deputation this morning is South Etobicoke Community Legal Services, Ken Hale. Good morning. Introduce yourself and your colleague and your position within the organization for the purpose of electronic Hansard, and then you may begin. You've been allocated 30 minutes.

Mr Kenneth Hale: Thank you, Mr Chairman. My name is Kenneth Hale. I'm the lawyer-director of South Etobicoke Community Legal Services. With me is Peter Bobyk-Huys. He is a client of our legal clinic and he'll be making part of our presentation.

Our organization provides legal services to low-income people in the south half of the city of Etobicoke, and we've been doing that for the last seven years. Much of our work involves representation of tenants. Based on our work in representing tenants and our work with the low-income community in general, we've come to certain views about the legislation that's proposed and we'd like to share them with you today.

We support the bill. We think it's a small step but an important step towards resolving problems that our clients face in trying to provide a home for themselves and their families. We encourage the committee to swiftly move it into law.

We also participate in a number of organizations that are bringing forward detailed critiques of the bill and we endorse their proposals, specifically the Inclusive Neighbourhoods Campaign, the Tenant Advocacy Group, which who is speaking this afternoon, the Legal Clinic Housing Issues Committee and the Federation of Metro Tenants' Associations.

We are here to share our direct experience in working with the people whom the bill is intended to benefit. Many of the things we've heard the witnesses and the committee members say about this bill and about the rights of tenants in general seem to be somewhat removed from any reality we've ever experienced and we're trying to bring some of the reality we've experienced to the attention of the committee.

We'd first like to address the granting of tenants' rights to tenants who are receiving some form of care with their housing. To do so, I'd like to introduce Peter Bobyk-Huys. He is a client of our clinic. He's been

trying for the last four years to get some redress through the courts for the actions of Housing Etobicoke, which was a project of the Canadian Mental Health Association that was supposed to provide supportive housing to people. I'd like to turn the mike over to Peter.

Mr Peter Bobyk-Huys: Good morning, Mr Chairman and members of the committee. My name is Peter Bobyk-Huys. I live in an apartment which is in a private non-profit housing project sponsored by the United Church. This building is safe, secure and well suited to my needs. There are staff on duty five days a week for 13 hours a day. These staff provide help in times of need. There has never been any question of my tenancy there and my rights are protected by the Landlord and Tenant Act. But this has not always been my experience.

In 1989 I shared a place in a private house with friends and suffered from the usual problems of tenants with no money. I was also an outpatient of Queen Street Mental Health Centre. This meant that I was seeing a social worker regularly and an occupational therapist so that I could get back to work. My social worker helped me apply to Housing Etobicoke, a program from the Canadian Mental Health Association. After four interviews and pages and pages of application forms, I was placed in a group home at 274 The Queensway in Etobicoke. I signed an agreement saying that the Landlord and Tenant Act did not apply, because it was a "supportive housing," but I never thought it would be any problem to me.

The house on the Queensway was suitable in many ways. I had a room of my own. I shared the rest of the house with three other people whom I got along with. The house was well equipped and some of the counsellors really took an interest in the residents. But a few months later, things didn't turn out so well. My counsellor accused me of being an alcoholic, even though I only drank two drinks a month. Two of the other residents were evicted while I was there. One of them was evicted without any warning, and I told the counsellors I thought that was unfair. My conflict with the staff was minor and there were never any violent words or actions.

1010

One evening while I was making dinner, the counsellors came and asked my roommate to go out with them; 10 or 15 minutes later they came back with two police officers and told me I had to go. I asked where I was going and they told me I had to go to Seaton House, a hostel for homeless men. I was too shocked to do anything and the only explanation they would give me for my eviction was I no longer fit the requirements of the house or the program. They told me that another program was willing to take me from Seaton House, but that was completely unsuitable for me.

My social worker from Queen Street tried to get Housing Etobicoke to take me back, but I ended up staying at Seaton House for three weeks in the dead of

winter at Christmas. The stress and uncertainty were too much for me, so I ended up back as an inpatient at Queen Street. I had never been hospitalized for five weeks since I was 16 years old. This was a major setback for me and it held my education back for six months.

I'm asking the members of this committee to approve Bill 120 and put tenants who are in the situation I was in under the Landlord and Tenant Act. No one should go through what I went through. If anyone needs to be evicted, the case should be taken to the landlord and tenant court. Leave it up to a judge after the tenant has a chance to tell his or her story. There are many people with problems who require some kind of assistance and care in their housing. They do not deserve to be treated like a non-person. Thank you.

Mr Hale: Had Bill 120 been the law in 1989, Peter might never have had to spend five weeks in the Queen Street Mental Health Centre. He would have got a notice giving him one week to cease and desist from whatever behaviour it was that the staff found objectionable, and if he didn't, the landlord could then have gone down to the local court and obtained a date before the local registrar and request that he be evicted. If Peter had wanted to dispute the claim, a hearing before a judge would have been scheduled and, after both sides of the story were heard, a judge would have decided whether or not he should move.

We don't understand why the right to be heard by an impartial public official before someone loses their home or before they have their rent raised should be denied to anybody, regardless of what their age is, what their health status is or whatever other criteria are used to make these people non-persons.

The bill doesn't treat everyone in every situation as a tenant. They recognize that sometimes we live in places that aren't our homes and so there are clear exemptions for temporary stays in hospitals, nursing homes, correctional facilities and rehabilitation centres. But the housing provider or landlord doesn't have the objectivity that's necessary to determine if one of the people who lives there, whether they be a resident, patient, customer, tenant, whatever they want to call them, should be forced out of their homes. We hope and we expect that the federal government will appoint people to the Ontario Court of Justice who bring this necessary objectivity to their job.

I think it's unfortunate but necessary to remind the committee that the objectivity required of a court that makes these determinations means that the legitimate interests of the landlord and other residents get taken into account. We can assure the committee that the courts have no problem in evicting tenants who don't meet their responsibilities. At least 100 tenant households are ordered evicted by the courts every working day at the University Avenue courthouse. I would recommend to any of the members of the committee who want to see the joy of being a tenant to go down to the landlord and tenant court some day and see how many people are processed through the eviction mill there. That's why we don't really think you're getting all the facts from people like Mel Lastman who tell you these horror stories

suggesting that the courts don't take landlords' concerns seriously.

We think some people are trying to raise issues beyond the scope of the bill for the purpose of blocking the bill. One of the concerns that's being raised is the inefficiency of landlord and tenant court. I can assure you that our organization and organizations we work with have been working for the last 15 years to try to improve the operation of the landlord and tenant court. But it's a fact that the Attorney General and the courts administration have not made adequate resources available to have these disputes resolved as quickly as they should be resolved.

However, I think parties to litigation at any level of our court system would say that about the court system, that adequate resources haven't been allocated. This doesn't mean that we should deny protections of the courts to vulnerable people until we get these problems solved. It means that we should do something about allocating more resources to the administration of justice, and it doesn't seem like anybody in this Legislature is interested in doing that right now.

Another effort that seems to be made to block the bill is raising the concerns about fire safety. I don't know what people have been telling you, but there have been ongoing consultations about the development of fire standards at least over the last year. Changes to the building code which apply to accessory units have been going on through a consultation process with all interested organizations under the auspices of the office of the fire marshal. That process included the Association of Fire Chiefs of Ontario. Mr Hare, the fire chief of Mississauga, was there participating in those deliberations.

I've reviewed those records and I can't see any indication there that any of these horrible things that are being mentioned at this committee that are going to happen to people in these basement apartments were raised in that forum. But if there are problems with the fire standards that are being proposed, there is a forum for raising those, a forum for discussing those, and it shouldn't be used by municipal officials who want to block this legislation as a way of blocking the legislation. It should be dealt with in an appropriate forum.

I'd next like to talk about our municipality, the city of Etobicoke, and the fine efforts it's made towards reaching the goals of having accessory units blended into our community. They claim they are one of the first cities to include provisions for accessory apartments in their new official plan. Unfortunately, they've put so many restrictions on accessory units in their plan that they might as well have just been honest and said, "We don't want accessory units in our municipality."

I understand they've tried to persuade you that these restrictions should be permitted all across the province. I think that's the surest way to make sure that this bill becomes totally useless. I'd like to just quickly go through some of the restrictions that they want to put on, which we think are basically efforts to exclude people in basement apartments or other accessory units.

First, they wanted a requirement that the units should be occupied by the owner of the property. I don't want to go into all the offensive assumptions that this implies, but

if you look at the question of what happens when the property owner decides to retire and move to Florida or decides he can't cope any more and has to move into a nursing home, are they seriously suggesting that the tenant, who may have lived there for 10 or 15 years, should be evicted because the owner wants to move to Florida and the thing no longer complies with the zoning code because it's not owner-occupied? I think this demonstrates how ridiculous the owner-occupied requirement is.

Next, adequate onsite parking. There are a lot of areas of Etobicoke where there's lots of offsite parking available, including parking on the street. I think you'd have to assume that meant virtually all tenants must consider the availability of parking before they rent a home anywhere. For many tenants, no parking is perfectly adequate because they don't own a car, but if you leave it up to the city of Etobicoke to decide what's adequate and to require that the parking be provided onsite, it's going to permit them to keep accessory units out of large areas of the city, also keeping out the tenants who might want to enjoy some of the high levels of amenities that Etobicoke's more affluent neighbourhoods have and that all of us in the city of Etobicoke pay for.

Another one of Etobicoke's restrictions would prohibit the changing of the exterior appearance of the dwelling to accommodate the accessory unit. No access ramps, no second exits, no enlarged windows, no changes at all to the exterior. The requirement is so inappropriate that it seems clear that exclusion of accessory units is really the goal and that the planning process is being used to cater to the prejudices of a vocal minority of well-off people at everyone else's expense.

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Our concerns that Etobicoke really wasn't too supportive of the idea of accessory units were substantiated when our legal clinic and a clinic in Rexdale and a group of tenants met with Etobicoke council in June of last year, with the assistance of the Federation of Metro Tenants' Associations. Six out of the eight council members who met with us and answered our questions on apartments in houses told us they did not support Bill 90 at that time. These six members also opposed enacting a city bylaw that would legalize one unit if Bill 90 wasn't passed.

We should also mention that three councillors refused to meet with us and two left the meeting before they answered any of our questions. That's the kind of treatment tenants get from many local councils. Either they're completely opposed to the issues the tenants are concerned with or they refuse to acknowledge that tenants are part of their constituency. When you get right down to it, that's why you have to have Bill 120, because the municipalities have not answered the calls that have been made to them.

In conclusion, legalizing accessory apartments is not going to solve the problems that a shortage of affordable housing and widespread income inadequacy or poverty, as we know it, is causing. We believe the province and the federal government are failing in the responsibility to deal with these larger issues, but municipal government has failed home owners and tenants who rely on accessory units, and when the municipality fails, the province

has to step in. If Bill 120 is passed, there are thousands of people who won't have to fear that a knock is going to come to their door and somebody's going to try to shut down their unit in order that the character of the neighbourhood can be maintained. Those are the people we're concerned about, and we think that this committee and the Legislature should be concerned about them too.

Similarly, expanding the definition of "tenant" in our tenant protection legislation will not solve all the problems of disabled and neglected people. But as Mr Bobyk-Huys said, no one deserves to be treated like a non-person, and by excluding people from the Landlord and Tenant Act you are treating them as non-persons.

If we give these people the limited rights that we grant to tenants, it will permit them, with other factors in place, to stand up against arbitrary and unfair treatment by those who have responsibility for their care. I think we're fooling ourselves to think that this arbitrary and unfair treatment doesn't happen even by people who are legitimately trying to provide care to people.

The Chair: Thank you. We will take questions in rotation. There's only about three minutes per caucus.

Mr Bernard Grandmaitre (Ottawa East): I agree with you that some municipalities are simply introducing restrictions through their municipal bylaws, and I think this government has a responsibility, maybe the Ministry of Municipal Affairs, to provide municipalities in the province of Ontario with some kind of a draft bylaw that would say A, B and C and so on and so forth. Then municipalities wouldn't use the excuse, "We don't like this," and "No, here's the way our municipality would like to accept these people in our communities."

Don't you think a draft bylaw—the Ministry of Municipal Affairs has done this in the past when municipalities don't seem to agree on some municipal bylaws or rules and regulations and policies. I've seen this done before. Don't you think the Ministry of Municipal Affairs should tell or indicate to recalcitrant municipalities, "That's the way we want things done," instead of looking at 834 different municipal bylaws?

Mr Hale: I agree that the Ministry of Municipal Affairs should provide assistance to Ontario's municipalities to carry out their responsibilities. However, if you're suggesting that this should be voluntarily adopted by the municipalities, then I think that approach has been tried by the previous government and has failed, and that's why Bill 120 has been necessary. This cooperation which was requested under the policy statement was not forthcoming, therefore the government has to take the next step and say, "You have to have this."

I'm not sure but I expect that kind of assistance is available, whether it's available through the ministry or whether it's available through the organization of municipalities. I would think that people wouldn't have trouble drafting a bylaw once they understand what the restrictions on their ability to exclude people are.

Mr Grandmaitre: What the previous government tried to do was to have municipalities amend their official plans to accept basement apartments or whatever. They didn't provide a bylaw or they didn't tell municipalities,

"This is what you should be doing." They simply invited municipalities to cope with this and to amend their official plans. Some municipalities—I'm told some 30% of our municipalities—did cooperate with the government, but 70% didn't. This is why I say that a draft bylaw would certainly help our municipalities.

Mr Hale: Without requiring them to adopt something, I don't think it would be worthwhile. But if you put Bill 120 into place and then say, "Here's how you can accomplish what's set out in Bill 120," I think it's probably a good idea.

Mr David Johnson (Don Mills): Thank you for your deputation today. As you've indicated, there have been deputations that have said somewhat the opposite. I'm looking at the deputation from MARC, from yesterday, the Metro Agencies Representatives' Council, which represents quite a number of operators.

They indicate in their brief, for example, that they have 1,100 individuals and 138 group homes and 163 apartments, so they have a great deal of experience. They represent agencies such as the Children's Aid Society, the Easter Seal Society, the St Vincent de Paul Society, YMCA of Metropolitan Toronto. These are people with a great deal of experience and these are people I'm sure we'd all say are good people, caring people.

They said that "The inclusion of charitable care-giving agencies under the Landlord and Tenant Act will not benefit these vulnerable people" who live in their apartments. "It will increase the frequency with which they are in court and decrease the availability of housing to them." So it'll have two detrimental impacts.

They say the Landlord and Tenant Act does not provide a speedy, a thoughtful or a caring remedy for the problem. They indicate that the process you've described you've been working on for 15 years is a very time-consuming and expensive process and, in their view, it's going to actually hurt the people who I'm sure we're all most interested in caring for. Given that these people have this kind of experience, how is it that you've come to the opposite conclusion?

Mr Hale: Were you here when Mr Bobyk-Huys gave his evidence? Calling the police and taking somebody down to Seaton House is very speedy, very expensive. I don't consider it to be too thoughtful, but that's the alternative these people are proposing, that they have untrammelled freedom to terminate people for whatever reason they want, for no reason. I don't think the problems with the landlord and tenant court are a good enough excuse to leave that kind of power over vulnerable people in somebody's hands, no matter how well meaning they may be.

We certainly wouldn't consider the Canadian Mental Health Association to be an evil empire or anything, but this is the kind of treatment it doles out to people when it considers it doesn't want them. We're asking for some kind of accountability for these people's decisions, because they don't have the necessary objectivity to determine that somebody's housing should be taken away from them.

Mr David Johnson: I guess the concern on the other

side is that there are other residents in these properties. One of the concerns they express is that through the landlord and tenant procedure being very time-consuming, it's difficult to deal with a resident. They say—this is the message they're conveying—that this is different than an apartment building, for example, because of the care component.

The care component means that people, they say, live very closely together and there's a strong interaction. If there is a tenant who is being very disruptive in that kind of setting, then it puts the other tenants at risk. The concern they're expressing to us is that the Landlord and Tenant Act is simply too long and too time-consuming to work in a care setting.

Mr Hale: I don't think they're being fair to the Landlord and Tenant Act. You give somebody a notice requiring him or her to correct the behaviour within seven days. If they don't correct their behaviour within seven days, you make an application to court. You get a court date within a week or two. The tenant could be evicted on that date if he doesn't show up to dispute it. If he shows up to dispute it, a week later a judge hears his case.

How much quicker can it actually be in the real world? If the person should leave, he or she needs some time to find alternative accommodation. It's not easy to make alternative accommodation arrangements from Seaton House. You should have an opportunity to go out and look for a place to live if your landlord wants you to leave.

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Finally, if somebody is being dangerous, disruptive, you have a police force who you call. They can come and remove the person from their home. We have the Mental Health Act by which, at the signature of a psychiatrist, people can be taken out of their home and put somewhere. Those are the kinds of remedies these people should be considering, rather than just their own social work staff or whoever making the decision, "This person no longer qualifies. Out on the street."

Mr Derek Fletcher (Guelph): Thank you for your presentation. Peter, following the same lines, were you disruptive in your house? Is that why you got thrown out, because you were disruptive?

Mr Bobyk-Huys: The only thing I disagreed with was I didn't like being called an alcoholic, and I put my foot down and told the counsellor I don't want to be called that any more. A week later, I was kicked out of the house.

Mr Fletcher: You had no appeal? In other words, you were out? You couldn't stay in the house while you appealed their decision?

Mr Bobyk-Huys: No. I was told, with the police in the house, that I had to go to Seaton House and I had no choice.

Mr Fletcher: Okay. Thanks. That's what Mr Johnson was getting at, that people who are unruly—and I suspect you were not that unruly. As far as some of the houses, apartments that give services, they were asking for an exemption under Bill 120 so they wouldn't have to fall

under the Landlord and Tenant Act. Is that an idea, that perhaps there could be an exemption on certain criteria?

Mr Hale: Everybody's got a special case. Our point of view is that everybody may have a special case, but every person they have in those programs is a person who's entitled to the fundamental human right to not be deprived of their home without some kind of hearing.

If it's a hospital—I mean, I read some of these briefs. I couldn't quite understand why some of these housing providers couldn't deal with pimps coming around and harassing their residents. Why can't these people deal with that in some other way than having the power to evict the vulnerable women they're trying to protect? There are ways to deal with these problems other than having untrammelled authority over your tenants. That's what we're saying.

The Chair: Thank you very much for coming down and appearing before us today. We appreciate you coming and, as I tell other presenters, this bill will begin its clause-by-clause review during the week of March 6. Thank you for coming.

Mr Hale: Thank you very much.

The Chair: The next presentation—

Mr Stephen Owens (Scarborough Centre): Was my name not on the list?

The Chair: Mr Owens? Your name was on the list.

Mr Owens: I thought that was the fastest three minutes I've ever seen.

The Chair: Well, I invite you to carry a stopwatch.
MANSE ROAD GROUP HOME

Mr Mark Zaborowski: I'd like to thank the members of the committee for the opportunity to speak today. My name is Mark Zaborowski. I'm the program manager of the Manse Road Group Home, which is operated by the Scarborough General Hospital in Scarborough. I'm here today with Marcella Hanuszcak, who was a client of ours in our group home and is now currently living independently in her own apartment.

Just a bit of a background to who we are: The Scarborough General Hospital had received approval from the Ministry of Health community mental health branch to open a 24-hour staffed group home for the severe mentally ill in 1985. The mental health services department of the hospital opened the Manse Road Group Home in October 1987.

The Manse Road Group Home currently is a residential rehabilitative program, and I will be stressing the term "rehabilitative" through my presentation today. It is transitional, with an indefinite stay policy. There is no set time frame for when clients need to move on. It is a cooperative living setting for 10 adults and those adults share the household responsibilities.

Currently the program is staffed 24 hours a day, seven days a week, and among the 60 group homes registered in the city of Scarborough, this group home for the severe mentally ill is the only one in Scarborough. The remainder of the group homes in Metropolitan Toronto you'll find in the city of Toronto and the city of Etobicoke, city of North York.

The Manse Road Group Home serves adults who have a severe mental illness, so we're speaking about people who suffer from schizophrenia, manic depression, chronic depression and post-traumatic stress. Currently we give priority to Scarborough residents.

It has 100 inquiries a year from Metropolitan Toronto. We've worked up to this point with 47 clients, and we have an average length of stay of 12.3 months. The clients, while living in the program, receive supportive counselling, crisis intervention, individualized client-centred goal planning and skills teaching.

The Manse Road Group Home is not permanent housing, it is not a boarding home, a rest home, nor is it a nursing home, a rooming house or a custodial care home.

The amendments to the Landlord and Tenant Act in Bill 120 will greatly extend tenancy rights to many more citizens of Ontario, and the Scarborough General Hospital applauds these changes. The current amendments will unfortunately negatively affect the adult mental health residential rehabilitative programs currently operating in the province.

It is doubtful that the intention of this legislation is to effectively remove a treatment model from the community, a model that has support from the mental health reform currently ongoing by the government. An array of community support services has been identified, that there be a number of options and that a range of options, including residential rehab programs, can be used to serve the mentally ill, the dually diagnosed and the transitionally aged youth, who are 16 to 24 years of age. When I speak of the dually diagnosed, I'm referring both to adults with severe mental illness and substance abuse problems and to adults who are severely mentally ill with developmentally delayed problems.

Under Bill 120, most, if not all, residential rehab programs, including the Manse Road Group Home, would fall under the Landlord and Tenant Act. This would have two negative effects.

The first one would be that the eviction process, as we've heard discussed today, of the Landlord and Tenant Act could take upwards of six to eight weeks. Residents who are verbally and physically aggressive can continue to intimidate co-residents while the eviction process proceeds through the court system. In a shared living setting, this climate of hostility can have serious effects on the mental health of the remaining consumers in the program. Imagine, if you will, a consumer with severe post-traumatic stress from physical and sexual abuse who must now tolerate the presence of a potential assault day and night for upwards of three months.

The second issue is that residents currently make an informed decision with regard to living in a residential rehabilitative setting and agree to the program expectations. That informed decision is made before they decide to enter the program, and these program expectations include the cooking of meals with the co-residents, sharing the regular household chores and the responsibilities of operating the maintenance of the house, and individual goal planning for each of them.

Under Bill 120 the consumers can choose to opt out of the rehab component. They can choose not to do any of the cooking, not to do the chores, bring home beer and stay in their room, and the only process for them to leave would be under the Landlord and Tenant Act. In fact those reasons would not justify an eviction, so essentially the group home would become a rooming house and what we would have is erosion of the rehabilitative components, which would disfranchise a great number of current and future consumers. I speak of current consumers, but we have people on the waiting list and I speak of future consumers who have not yet applied. As I said earlier, we have over 100 inquiries a year to our setting alone.

Alternatively, the current proposed legislation does allow for exemption of rehabilitative programs. To be exempt, the program must have a minority of its residents call the building their principal residence and have an average length of stay of no more than six months.

How does a program which wishes to remain rehabilitative serve the homeless mentally ill, the transitionally aged mentally ill youth who cannot remain with their parents or the new Canadians who have no family in Canada and are in need of a residential rehabilitative setting?

All of these individuals may need the Manse Road Group Home as their temporary residence while regaining their self-confidence, dignity and stability in mental health. To comply with the current amendments, a mental health group home would have to refuse admission of these consumers in order to maintain the exemption, in that it could not have a majority of the residents call that setting their principal residence.

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Similarly, the six-month average length of stay will demand that programs select only those clients who can effectively move to greater independent living within six months. Where is it written that six months is the universal average length of stay for all rehabilitative programs, regardless of disability?

Refinements to Bill 120, part I, amendments to the Landlord and Tenant Act which would continue to extend tenant rights to those living in permanent housing, prevent housing operators from hiding from the Landlord and Tenant Act through a rehabilitative exemption and yet acknowledge the need that rehab programs should include the following recommendations—and I do stress again that in principle the Scarborough General Hospital mental health services does support the extension of tenancy rights to a great number of citizens. Our intention here is to protect those rights for those citizens who under Bill 120 would have protection and also highlight the fact that there are operators who would prefer an exemption. We need to deal with that fact as well.

The first recommendation would be that rehabilitative programs wishing an exemption from the Landlord and Tenant Act must apply for such an exemption to the Ministry of Housing and/or the affiliate ministries. Currently there is no application for exemption.

The second recommendation would be that a program, once exempt from the Landlord and Tenant Act, would

be given clear guidelines, established to protect the residents against arbitrary discharge from the program. Again, the Ministry of Housing, with the funding ministries, could set such guidelines.

This is based on recommendation 15 of Dr Ernie Lightman's report, *A Community of Interests*. Again, programs would have to apply for exemption and, secondly, once they were exempt, there would be due process laid out by the funding ministries as to how you would go about asking someone to leave the program because they were not following through the program expectations.

The third recommendation refers to part I, subclause 1(3)(i.1)(ii)—I'm not sure if I read that correctly—which reads, where "the building or structure in which the accommodation is located is not the principal residence of the majority of the occupants of the building." As I've discussed previously, those who have no principal residence will need temporary residency in a rehabilitative setting while they're getting the services there. So the recommendation we have is to simply delete that clause.

There was some discussion with my colleagues that perhaps the word "principal" would be changed to "permanent." You will hear that possibly proposed. At this point the program that I represent is suggesting that simply we delete that clause altogether.

The fourth recommendation is to change the average length of stay from six to 18 months. Prior to deciding on the 18 months, I was going to suggest a flexible length of stay which would be negotiated with each client. There is no average flexible length of stay at that point, but if the government wishes a number, and it seems as though it wishes a number of some sort, I would recommend 18 months, although the Manse Road Group Home has an average length of stay of 12 months. Some of the clients have lived there for over six years, and others have been there less than a week. Other programs that I know of have an average length of stay of two years, 24 months. It is doubtful that there is one perfect average, but greater flexibility is certainly necessary for client-centred rehabilitation.

The fifth recommendation would be that where tenants live in shared accommodation, ie, shared kitchen and bathroom facilities, much like what you have in a group home setting, if we were under the act, and a co-tenant is in violation of section 109 of the Landlord and Tenant Act where the safety of other tenants has been seriously impaired, which necessitates the eviction process, after the serving of the second form 5 of the Landlord and Tenant Act—form 5 is the "Notice by a Landlord of Early Termination for Breach of Obligations by Tenant"—the tenant be temporarily relocated at his expense and that a full landlord and tenant hearing be accelerated to expedite the outcome of that eviction process.

Currently we've heard that the eviction process works but we do know that there are lengthy delays. This recommendation would expedite the eviction process, would give the tenant rights but would certainly respect the safety of the other tenants in the shared accommodations, which would be under the Landlord and Tenant Act. I'm speaking now about programs that would in fact

fall under the Landlord and Tenant Act. This recommendation follows recommendation 17 of Dr Ernie Lightman's commission, *A Community of Interests: The Report of the Commission of Inquiry into Unregulated Residential Accommodation*.

Finally, there are critics of the residential rehabilitation model who will speak of abuses, and you've heard some of them today, arbitrary discharge of a consumer on very short notice, whereby a man or woman would be left in the streets with all his or her worldly belongings in a green garbage bag. Our recommendations we think will prevent such abuses from occurring, yet keep the rehab principles in residential settings as a viable alternative in the community mental health field.

At this point I'd like to give the mike over to Marcella Hanuszcak.

Ms Marcella Hanuszcak: My name is Marcella Hanuszcak. I'm a psychiatric survivor of 30 years. I am also a former resident of the Manse Road Group Home—excellent management and staffing, a very good program.

Through Manse Road staff's patience, efforts and encouragement I have been able to return to independent community living. Manse Road did help me by having a structure set up and by having expectations of the residents. This has also helped me get back on my own feet. I knew that if I didn't follow the expectations I would not have been able to stay there. I stayed at Manse Road once for a year and a half, the second time for a year. If my stay had been limited to six months, I don't feel I would be where I am today. I now live in my own apartment in a building housed by an agency for people with mental health problems.

Even though I'm doing really well, I and all the other tenants are very disturbed and frightened by one person who has been threatening tenants and destroying building property, a person who has constantly been taken away by police to psychiatric wards for his disruptive behaviour. He has been behaving this way for the last eight months, yet the agency is letting him still live in the building. We live in fear when he is out of hospital. We were guaranteed by this agency safe, affordable housing. We are not getting safe housing. This person is very dangerous and very destructive. Our letters of complaint and telephone calls were to no avail. How do we get this person evicted? This is our problem.

I would like to recommend faster evictions in the cases where the safety of other tenants is in jeopardy or violated. What we need is an accelerated eviction process when the safety of tenants is violated.

Mr David Johnson: I think you've really come to the nub of the point there, the fast track or the accelerated process for evicting tenants who are causing disruption and potential harm to the other tenants. As you point out, the Lightman report actually goes in that direction as well. Have you discussed this with the Ministry of Housing? Have you had the opportunity to talk to them and suggest that?

Mr Zaborowski: Or Health.

Mr David Johnson: I guess it's Housing in this case. If you have, what response have you had?

Mr Zaborowski: I myself have not spoken to the ministry about an accelerated eviction process, but I understand that there are economic concerns both for the tenant who is being relocated and for the landlord with respect to who pays the rent while this tenant is being relocated.

The recommendation that we have would do two things: One, after the serving of the first form 5, a tenant has a week to correct the behaviour. If we're talking about safety issues and it's clear that there are still threats to co-residents, then I'm making the decision that clearly that tenant is now responsible and would be relocated. The acceleration of the eviction process would cut down on the economic costs to the landlord and presumably would give safety to the clients as well.

Mr David Johnson: The Manse Road Group Home, from what I've heard here this morning and what I've seen, is a very caring place and is certainly well run and concerned about the residents. I guess there's a concern that there would be some arbitrary eviction. You heard the previous deputation before you, the gentleman who felt that he was being arbitrarily evicted. What sorts of procedures would you have in place at the Manse Road Group Home to ensure that there wouldn't be an arbitrary eviction?

Mr Zaborowski: Currently or what we're proposing in the recommendations?

Mr David Johnson: Currently, I guess.

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Mr Zaborowski: Currently the residents come in, they sign a licensee agreement and it spells out what the non-negotiable rules of the program are. If there are behaviours that are very disruptive for the other residents, under the Mental Health Act we look at behaviour initially as related to illness and it could very well be, so we would be looking for someone to be hospitalized because there may be an issue about medications or the exacerbation of their illness.

Under the Mental Health Act there is a form 1 that a psychiatrist can sign. If the psychiatrist has not seen the client in the last seven days, then he or she cannot do a form 1, which is to remove someone or to have someone assessed for three days. That is one of the problems with people who are disruptive. If they haven't seen any physician in the last seven days, then a doctor cannot do a form 1.

What you're left with is the Mental Health Act and what the police can do. Unfortunately, in the last several months we've had the police come in and, having not seen the behaviour that we are concerned about, they will often do nothing. They will use their discretion, as they're allowed to do under the Mental Health Act, but they will shy on the conservative side.

In our setting we would assess it as needing an assessment within a hospital setting and try to persuade the client to go in that direction. If the behaviour persisted, we would then discuss the understanding that they came into the program with and work out an understanding whether they choose to live under these guidelines and rules or not, and over time, which could be a number of

months, work with them in terms of having them make a decision whether they want to stay or go.

If so, usually ourselves, or often they come with a social worker-case manager, would discuss what a more appropriate setting would be, be it living on their own in an apartment or shared accommodation where they don't have the restrictions that we might have. It's a negotiated process unless it's an emergency or crisis situation.

Frankly, in the last four years since I've been manager there, we've only gone through that process three times. Two of those times were crisis situations and the third was a negotiated process.

Mr Gary Wilson (Kingston and The Islands): Thanks for your presentation, Mr Zaborowski and Ms Hanuszczak. I'd like just to pursue this for a moment, especially the aspect that in the last four years you say you've had only three cases that would fit into your concern about the need for fast-track eviction.

Mr Zaborowski: That's right. Prior to that there were probably several more, so in the operation of the program there may have been four or five. Frankly, only two or three would be the concern of the fast track and the other two or three were people who weren't really following through with what the program was meant to do for them.

Mr Gary Wilson: How many people would have gone through the program in that same period of time?

Mr Zaborowski: We have up to 47 clients currently who have gone through the program in the last six years.

Mr Gary Wilson: On balance, it might suggest that by far the greatest proportion of clients has gone through in an orderly or respectful way and seem to use the program in the way it was designed to be.

Our concern in putting forth Bill 120 is to make sure all tenants are treated in the same way, have the same access to conditions of tenancy that are set out in the Landlord and Tenant Act. You mentioned processes of negotiation, for instance. There are criteria set out under the Landlord and Tenant Act, of course, that respond to those needs to deal with issues of tenancy in an objective manner. This is what our goal in putting forth 120 is, to make sure that all tenants, wherever possible, have access to that process.

Mr Zaborowski: I agree that when being a tenant, you should have all the rights of tenancy. If the Manse Road Group Home will operate under the Landlord and Tenant Act, our concern is not necessarily with having a fast-track eviction, because as you pointed out, we would really need that very infrequently, but that the erosion of the rehab principles that currently are in the program will occur.

People will understand that they're under the Landlord and Tenant Act but they do not have to buy into the rehab component of the program. What you will have over time are people simply living there as a rooming house. The program itself would no longer be a rehabilitative program, getting referrals from the hospital and moving people through in a period of a year, a year and a half and finding permanent housing for them after they've learned certain skills. The program would no longer be that type of program.

If this occurs across the province, what you're going to see is a fading of this particular model. Under mental health reform, people are still talking about an array of services, an array of options. This is one option, a small one, but one that is working in the community.

Mr Gary Wilson: But don't you think the people you serve are motivated by their desire to use your services and that that is why they would be going, to take advantage of the rehabilitative services that you offer?

Mr Zaborowski: Motivation is an interesting question when you are talking about people who were severely mentally ill. As Marcella has pointed out, some of the motivation that she received often came from the support from the staff. Over time it can be sort of a tug of war at times. If people know what their rights are as tenants and they don't really have to do what is asked of them in some ways, they may choose to continue living there indefinitely. That would be their right and we would respect that.

The reason we talk about the fast track is because there are a number of housing providers who will now be under the Landlord and Tenant Act who will deal with a lot of clients who do have mental health problems. Our recommendation around fast track is for those settings where there is shared accommodation, where there are shared kitchen and bathroom facilities, not for all landlords to have access to this throughout the province.

Mr Gary Wilson: I'm still interested in the aspect of whether you think the service will deteriorate or disappear. I'm thinking too that we've heard submissions from people who are in a rehabilitative setting and who find it a source of anxiety, say. Of course, we heard one this morning where being removed from their unit was very sudden, and there's no recourse.

I would think that would be something that might be at the back of a person's mind in that kind of accommodation, that there was always a possibility that they might be evicted. Wouldn't there be some assurance, some foundation put under them, that there is a process, that there has to be a hearing before they would be evicted? Wouldn't that be part of the rehabilitative process?

Mr Zaborowski: It certainly would for those people who would fall under the Landlord and Tenant Act. Our recommendations to maintain this rehab focus would do two things.

One, it would make group homes who think they are rehabilitative apply for such exemption to the Ministry of Housing, if that be the setting best to decide that. There would be an objective body who would make an assessment whether in fact this setting was rehabilitative or not.

Second, once that exemption was given, there would be a due process laid out through the Ministry of Housing and the affiliate ministries as to how one would go through asking someone to leave a program. What we're suggesting is a parallel process similar to perhaps the Landlord and Tenant Act but without the timing issue and without the cumbersomeness of the Landlord and Tenant Act—certainly without the entrenched rights, but it would still maintain these programs as rehabilitative and not housing.

Mr Joseph Cordiano (Lawrence): Mr Zaborowski and Ms Hanuszcak, thank you very much for a very thoughtful, very concise and thorough presentation and also, I might add, a very rational one. I think what we're beginning to hear emerge from groups such as yourselves is that there are many problems contained within Bill 120 which will present a series of challenges, at the very best, for you to overcome if it's implemented the way we see Bill 120 brought forward before us.

I would like to say that I'm beginning to believe the only way the minister and the members of the government are going to realize that there are problems with Bill 120 is to put them in real-life situations to experience perhaps what you're telling us may unfold in those circumstances; in fact that's already unfolding under your present circumstances. I don't think the government realizes what, as a practical, real-life experience, would result with the difficulties contained within Bill 120.

I want to get back to this fast-track eviction question because that seems to be the real stumbling block for the government to overcome. I think you have largely demystified what would happen under the Mental Health Act: the fact that a psychiatrist would have to have seen the behaviour of someone over a period of time, that this is not such a fast, quick-acting solution to overcome the difficulty that's experienced.

1100

As well, you've pointed out—and the government is now saying, "Well, you could always call the police in an emergency situation." I would really like to hear from the police, Mr Chairman, because if that is going to be the end result of Bill 120, then at some point perhaps it would be wise for us to have the police before us, the people who are on the front line, who will have to deal with these difficult circumstances—in some cases life-threatening, as you've pointed out.

The question is, how will this affect you in your ability to provide the high-quality service and the kind of setting that fosters personal growth and the ability of someone like Ms Hanuszcak to then go on and live in a setting that is conducive for her to maintain the quality of life that's expected? This is going to have some implications for you.

Mr Zaborowski: If we speak of using the police more often than perhaps we do now, housing programs in general, the question is, do you want to start criminalizing clients who have a mental health problem?

Mr Cordiano: Excellent point.

Mr Zaborowski: If you're calling the police for a lot of behaviours that you cannot manage because you're restricted by the Landlord and Tenant Act, then you may be seeing a lot more clients whom you don't particularly wish to go through the criminal system starting to be charged more often. Being charged for certain offences is a real, live learning experience and in fact may be the only way for some people to learn they have to cease and desist with certain behaviours. But the downside of it may be that you may be criminalizing a lot of people who perhaps could be dealt with more supportively.

Mr Cordiano: I think you make a very good point.

The Chair: Thank you very much for appearing this morning. The committee will be looking at this bill clause by clause beginning in the week of March 6.

GEORGE HERMAN HOUSE

Ms Pat Munro: Good morning. My name is Pat Munro and I'm the director of George Herman House, which is transitional housing for women that opened in November 1976. It offers a supportive environment in a downtown residential area, the Annex, for women who are recovering from psychiatric and emotional illnesses. We have 10 residents. We're a very small, little house. We're not a branch plant. We're just one little house that we call "normalization."

Our purpose is to bring in women who choose to live with us. What we do is try to normalize their life. So it's a transition between family, between hospital, and independent living. We provide the opportunity for learning skills that they need so that they can live in the broader community more successfully.

We're funded by Community and Social Services and we're under the halfway house program.

As director of Herman House, I'm very pleased to provide some input into Bill 120 with regard to the impact of the bill on our program. We strongly support Bill 120 but appreciate the recognition given to rehabilitation programs as being exempt, with some exemptions in the act.

What I've done is gone through the act and looked at some key points that I think would really impact on our program.

Subclause 1(3)(i.1)(iii), where it says, "The average length of the occupancy of the occupants of the building or structure in which the accommodation is located does not exceed six months...." Our recommendation is that this specific duration of time not be time-lined. We strongly recommend that in a program such as ours, the length of stay be flexible and be based on individual need for the consumer-survivor, and that the terms of residency be specified in a written service agreement prior to the applicant moving in.

As we heard from my colleague previously and as we all know, we wax and wane in our recovery or any kind of changing of behaviour in our own lives. Some people can come in and three months later they're ready to go. We've had people come in for two years, go out into the community, fall flat on their faces, return back to Herman House for another two years and then move on. With six months, what would happen is that would put an undue stress on us as staff. I must say we have 10 residents, and in our staffing there's myself, one other full-time person and a part-time person. We're not heavily staffed, so when somebody is really having a difficult time, we need some flexibility to support that person and to keep them housed. That's what our main objective is, to keep them in the program if at all possible.

We also recommend that the wording in subclause 5(1)(e.1)(ii) be changed from "principal residence" to "permanent residence." Even though we're transitional housing, this is their permanent residence while they're with us. Usually our residents have no other address. As

you know, to receive family benefits or general welfare, they need a permanent address.

At Herman House our primary position is rehabilitation rather than accommodation. I was sitting listening to my colleague Mark, who just left, and mulling over the problem of fast-track evictions. I have been in the business of rehabilitation for more years than I'd like to say, but it's 31 years this year. I have only been at Herman House for five years. These occurrences happen very infrequently in any kind of rehabilitation program, because what we're doing is constantly setting up contracts with people, cajoling them, encouraging them, and when they're not able to meet the goals, to redesign our expectations, working along with the mental health people.

It is true that if one resident gets into a lot of trouble and she becomes harmful to herself or others in our residence, our first plan of attack is to get hold of her psychiatrist and have this person assessed. We are very, very mindful of the other vulnerable residents who are living in our house. These women share rooms, so it can be a real chain reaction. If someone is being really quite ill, that's the first plan of attack.

We all know and we've all heard about the cutbacks in our hospital situation. It is not so easy to get somebody in hospital these days. A few years ago, it would be sort of a *fait accompli*. Someone becomes ill, you'd phone the emergency, you say you're coming in. You pretty well know that if this person is psychotic, they will be hospitalized for a few days. In 1994, in this city, if you take someone into hospital, you might or you might not have that person hospitalized. They will be assessed, yes. Maybe their medication will be changed, and they'll be sent home with the same kind of behaviour that they had before. It really is a judgement call of us as staff, and it's the safety of our house and of that person, who is very ill.

1110

When I'm feeling most vulnerable, as a director of this kind of a program, I can perceive saying, "You've just been walking on the roof and I'm going to give you 90 days' notice to leave our house." I know that's not going to happen, but that's my greatest fear.

When someone is really ill, they need to be hospitalized and sooner or later, for sure, we'll bang on that hospital door until that person is in for at least 72 hours, but then to have the option of looking at, say, the safety of your house and saying, "Can we offer the kind of support that this person really needs at this time of her life?" We're only talking about now, but maybe later on they can return to Herman House, and it's that option we need to continue.

If the bill goes through the way it is now, I think what is going to happen to our program is that we won't be taking the risks that we are now and we will be looking pretty carefully at people to make sure they're able to spend their time and that they have never had a history of being very ill. That is my concern.

I think I would like to leave the rest of the time that's allotted to me for any kind of questions about our program and my concerns.

Mr Owens: We've heard a number of presenters talk about the abbreviated eviction process. I'm still personally trying to sort through that. I guess my question is around the nature of a residence like Herman House and if someone's disruptive behaviour is a function of their illness—disruptive behaviour, violence or whatever the manifestation is—why, if this is a caring setting, would the house—I'm not talking about Herman House specifically—but why would the residents want the ability to toss somebody out when they're at the point of crisis, and after a period of hospitalization, stabilization, therapeutic dosage of medication, they can be brought back into your setting? This is something I'm having some difficulty with.

Ms Munro: There's no staff in the house overnight, for one thing. They are sharing rooms, so if someone is very disruptive or a harm to themselves or others, then at that point, it's a safety issue as much as anything. What we have done in the past is if we can get that person hospitalized and when they're stabilized, they're not evicted.

Mr Owens: Right.

Ms Munro: I must say that in the four years I've been at Herman House, we have never evicted anyone.

Mr Owens: I guess this is my point, that these kinds of behaviour—and there's no such thing as spontaneous generation that all of a sudden people act out for no particular reason, that there is an issue with respect to their illness or something that needs to be sorted through, but nobody acts disruptively just for the sake of being disruptive.

Ms Munro: No.

Mr Owens: My concern is trying to find the balance between a sector that says it's caring and wants to be rehabilitative but also, on the other hand, says, "We want the ability to have people removed on an abbreviated basis." I'm having some trouble reconciling the two issues.

Ms Munro: I guess if we were a setting where we could bring in added supports of staffing and if we had that option, which we don't—alongside of our hospital cutbacks and our people going into hospital less frequently, and I stress that, we're not able to provide the care and safety of our house when someone is ill.

Mr Owens: With the state of the art in terms of pharmacology, I would submit that maybe there's not as much necessity to hospitalize as there was in the past with the kinds of psychotropic drugs that are available now.

Ms Munro: Right.

Mr Owens: So it's not perhaps so much that there are cutbacks but in terms of the necessity or the frequency with which people should be hospitalized.

I guess I'm looking for advice in terms of again reconciling this problem. We have the Parkdale Community Legal Services coming here later today. I'm sure they're going to be able to wax poetic about the kinds of problems people have had with the current abbreviated eviction process, which is, "Hey, you, you're out of here."

Ms Munro: I guess in all due fact that there is a

process, and I guess what I'm looking for is that safety net, realizing that we're not in the business of dehousing people. This is all part of the rehabilitation process.

Mr Owens: Sure. That's right.

Ms Munro: It's losing that safety net that worries me, and in other housing similar to ours. I could give you many, many stories about someone who becomes ill or their circumstances change very quickly and they become very suicidal. They are a threat.

Mr Owens: Sure.

Ms Munro: To remove that safety net—and certainly there has to be a process. There would be lots of input. Fortunately, to date, most residents recognize that they need more support than we're able to give them, so they will choose to leave.

Mr Owens: So there is cognition on the part of the resident. In terms of your needing or needing to feel that there is a safety net, do you not also agree that your residents also need to have the feeling that there's a safety net at some level? Again, this is not just about Herman House, but the residents also, in terms of their therapeutic and rehabilitative relationship, need to feel the kind of protection that they cannot be summarily removed?

Ms Munro: Yes, and that is all spelled out in a letter of agreement when they come in and when it's all—

Mr Owens: This is something else I've been thinking about. How does a person present themselves at your home? Are they compos mentis? Do they have capacity to understand the nature of the agreement and—

Ms Munro: Oh, yes. Most of the young women we house are women who've maybe been in second- or third-year university and they have discovered unfortunately they have schizophrenia or whatever. They're certainly at the upper end of health, so to speak.

Mr Owens: Sure.

Ms Munro: If you had dreams of going to Osgoode Hall and you find out that you have a serious illness, that's very difficult to come to terms with, let alone the family. Suicide is one of the options that some of them unfortunately think about. When they come in, we say to them: "What goals do you want to work on and how do you want to work on them? We're here to support you to get to where you want to be." We establish the relationship at that point.

Mr Owens: Thank you. I appreciate your advice.

Mr Grandmaître: You say you support Bill 120, but I've noted about five, maybe six, amendments you would like to see go through before Bill 120 is fully acceptable to you.

What would be the average length of stay in your home?

Ms Munro: The average length of stay is—this is off the top of my head—about 12 months or 18 months.

1120

Mr Grandmaître: The previous group did mention that 12 to 18 months would be much more acceptable than the recommended six-month stay.

The fact that you're not staffed 24 hours a day: How

do you pick and choose, or do you pick and choose your clients?

Ms Munro: How do we pick and choose our clients: We present what we have to offer to care givers and whatever, and usually women come to us, and they know—

Mr Grandmaître: They're not being referred to you.

Ms Munro: They sometimes are. We have a lot of referrals. Some people choose to live with other women, at a time—they are referred, but they certainly come—one of the first things is that after they find out what we have to offer, they have to want to live at Herman House.

Mr Grandmaître: Do they sign an agreement with you?

Ms Munro: Yes.

Mr Grandmaître: That they accept the house rules, if I can call them the house rules.

Ms Munro: The rights and responsibilities, yes.

Mr Grandmaître: I see. And you say that you have infrequently had to evict people.

Ms Munro: That's right.

Mr Grandmaître: Is that because you pick and choose your clients?

Ms Munro: At the moment I think it is because, as this other gentleman said, people just don't get sick overnight. So you're always, you know, "How are you feeling? What are you"—

Mr Grandmaître: Reassessing.

Ms Munro: Reassessing all the time, yes.

Mr Cordiano: I wanted to zero in on the question of eviction and to try and come to grips with that very thoroughly, because by and large we in our party support Dr Lightman's recommendations. We want to support the Landlord and Tenant Act coming into force under the sections of Bill 120 that would give protection to tenants, but we're having difficulty with this section in particular. I think that's echoing what I'm hearing from groups like yourself.

As I'm beginning to hear some sort of consensus around this from groups that are concerned about these areas, if there were an amendment to allow for temporary relocation, ie, temporary eviction, which would then move forward the review of someone in those difficult circumstances, that would allow for a psychiatrist to come in, then that would allow you some measure of protection. As well, someone who is a difficult tenant could not hide behind the Landlord and Tenant Act—that is, not pay for their care services and then pay the rent portion of their expenses and thereby not be evicted under the Landlord and Tenant Act, that there were no grounds for eviction on that count and with respect to that tenant being a difficult tenant.

There's a lot of grey area there, it seems to me, that someone can go on like this for some time. In practical terms, you may not have experienced that many evictions, but there are circumstances where someone who wants to play this out for a while—and I've heard this in our committee hearings, that there are circumstances like that where it could go on for some time, and that tenant is

still a danger to other tenants. Nothing may have happened as of yet, but the mere fact that there is a danger or that there's a posing of a danger upsets the entire number of residents who are housed in a particular circumstance. So I need to get from you a sense that you would support the Manse Road Group Home recommendations around a temporary kind of eviction, that we could make amendments to this bill that would provide for that. Do you think that's possible? Would you agree with that approach?

Ms Munro: Yes, I would. I appreciate both sides of the argument, because I worked for a number of years in boarding houses in Parkdale and I spent many years out on the streets working. This was pre-Habitat. I know where this bill's coming from, but I also know of the grey areas, as you're talking about, and the need for that in order for us in the rehabilitation field to continue offering the services.

Mr David Johnson: I certainly appreciate your deputation here this morning. When we're looking at the kind of facility that you have and the service that's given, we're very fortunate, I think, in Ontario to have people who are prepared to provide the kind of care that is necessary, and we should listen very closely when groups come in to make deputations.

The sense I have is that the important point you're trying to make is that this is a rehabilitation program. As you said, you're in the business of rehabilitation, essentially, number one, and not accommodation. Accommodation, I guess, comes with it, but the important aspect is rehabilitation.

If you are permitted the kind of amendments that you've put forward, such that the length of stay could be flexible, not with the restriction of the six months, and if the residency requirement is adjusted from "principal residence" to "permanent residence," then under those circumstances you would not come under the Landlord and Tenant Act. I presume you'd have an exemption because of the rehabilitation nature, which is different perhaps from some other operators. We've heard of operators who have caused problems, certainly, for tenants, and perhaps many of them would not qualify under the rehabilitation clause.

In that situation then, you would have the ability to deal with the situations that come up every once in a while, and this would be a balanced situation, recognizing the rights of the individual. Certainly you wouldn't be in the business that you're in, if I can call it a business, if you weren't very concerned about the rights and situation of each individual person. You can balance that with the rights of the group as a whole, and of course you have to be concerned about the rights of the group as a whole. Is that kind of what you're saying in a nutshell?

Ms Munro: Absolutely. You said it much better. That's what I was trying to say. I appreciate that.

Mr David Johnson: I think when it comes from somebody who's there and somebody who is providing that sort of service, it has a whole lot more meaning than when one of us says it.

You also mentioned that if the bill goes through the

way it is, either consciously or perhaps subconsciously, your group would be forced—I don't know if "forced" is the right word—but you would probably be taking a somewhat different approach in that you wouldn't be taking the same risks. You'd have to look at people a little more carefully. I wonder if that would mean that some people who would perhaps desperately need the kind of service that you provide might then unfortunately be excluded.

Ms Munro: That's my concern. That's the human part of me that's speaking. We have taken a lot of risks at Herman House, which I'm very proud of. One of the things a lot of my colleagues would exclude people for is suicide attempts: How many have you had, how frequently in the past?

We have said to people who have thrown themselves in front of subway trains: "Okay, we're willing to give you a chance. Are you willing to give us a chance?" and have done very, very well, which I'm very proud of.

1130

That's a huge risk, because you're not really sure. Once again, the paranoia I have about that hospital down the road here is, are they going to be there for me as much as that client when the time comes? We would not be doing that if we thought—we're going to grow old together, in other words. It's going to be really hard if it doesn't work out. I'm certainly speaking for myself and I would think of lots of other agencies where we've had tremendous cutbacks in our staffing and in our finances, and we just don't have the staff any longer to move in there and support people who are really high-risk.

The Chair: Thank you very much for appearing before the committee today.

GENESIS COMMUNITY SUPPORT SERVICES

The Chair: The last presentation for the morning session comes from Genesis Community Support Services. Good morning.

I guess it's really not appropriate to have Genesis come last, but nevertheless, thank you for coming to see us. You've been allocated 30 minutes by the committee for your presentation. You may begin by introducing yourself and your position within the organization, and then the time is yours.

Ms Balmain: Good morning. My name is Ellen Balmain. I'm the coordinator of Genesis Community Support Services. The program is based in Stratford, and it's sponsored by the Canadian Mental Health Association, Perth county branch. We service all of Perth county.

I would like to thank you, as I start, in case I forget at the end, for this opportunity to speak to you and to provide some input into the proposed amendments of Bill 120. What I want to do is outline our program very briefly.

Our housing program began very modestly in 1988 with one transitional, rehabilitative residence for five individuals. We now operate an apartment project that consists of four single and four shared apartments in Stratford, and recently opened three more single apartments in the Listowel area. That's in northern Perth county. In 1990, we opened a high-support group home,

which was the traditional model that was staffed 24 hours a day and housed six individuals. We have since then, in the fall, changed that building to apartments that house three people, which we operate under the Landlord and Tenant Act, as we do the other apartments.

In response to consumer needs and desires, we restructured the program in 1993 to provide flexible, portable support services. We currently service 90 people experiencing or recovering from psychiatric or emotional problems; 26 of those individuals are living in our rent-geared-to-income housing program that now consists of the original group home from 1988 and the rest of the apartments.

My comments and recommendations today are based on what we at the program believe to be of critical importance in maintaining our array of flexible supports and accommodation options which will remain responsive to the needs and desires of Perth county consumers-survivors.

Genesis Community Support Services strongly supports Bill 120, the amendments to the Landlord and Tenant Act. The overall goal of Bill 120, to protect the basic rights of all persons in their housing, is commendable. Furthermore, we appreciate the recognition that's been given to rehabilitative programs such as Genesis as being exempt from the act. However, our concerns focus on the specifications pertaining to length of stay and the principal residence, which we feel will restrict our rehabilitative program from providing necessary services in the future.

With specific regard to the Landlord and Tenant Act, and subclause 1(3)(i.1)(iii) regarding the length of stay, we support the concept that rehabilitative programs should be for a specified duration and that occupancy will terminate when a person has met their objectives or when it has been determined that the objectives will not be met, as Bill 120 proposes. However, it has been our experience that the rehabilitative time period varies from individual to individual and typically can take up to two years.

The proposed occupancy criteria of six months or less does not allow the necessary time our clients have proven to need to prepare for increased independence. The nature of the serious mental illnesses that bring people to the Genesis program have a profound effect on many aspects of their lives and requires a long-term rehabilitative service approach. We believe the six-month time limit would create unrealistic expectations and undue pressure for residents to make the sufficient gains necessary for independent living.

We strongly recommend that in rehabilitative programs the length of stay remain flexible and be based on the individual needs of the consumer-survivor and that the terms of residency be specified in a written service agreement prior to the applicant moving in. Further to this point, when we do this we do renegotiate the service agreement as the individual needs change.

With regard to the "principal residence" subsection, we are concerned that the stipulation that the accommodation not be the principal residence for the occupants undermines our ability to provide rehabilitative services within

the framework and safety of supported housing. Most of our housing applicants have no permanent address at the time of referral, such as when they come to Genesis following a lengthy hospitalization. Therefore, the accommodation is the principal residence for people while they are participating in the recovery rehabilitative process of the program. To be eligible for general welfare in Perth county, our consumers are required to have a principal address and must therefore use the rehabilitative housing address as such.

We recommend that the wording in the subsection be changed from "principal residence" to "permanent residence." While we recognize that it is their principal residence, it is not intended to be their permanent, long-term residence. We also recommend that the rewording of this subsection include a clause stating that the definition does not affect any provisions under the General Welfare Assistance Act or the Family Benefits Act.

The other section that we wanted to speak to was regarding the purpose of occupancy. We recommend that in programs where the primary purpose is rehabilitation and not accommodation, such as group homes, the organizations be able to apply for exemption from the Landlord and Tenant Act. We do not believe, however, that community apartment programs should be exempt.

It is vital that programs that would be exempt from the Landlord and Tenant Act be required to meet criteria set out by the Ministry of Housing in conjunction with other relevant ministries to protect tenants against arbitrary evictions. Organizations should also be required to implement due process for residency termination as per recommendation 15 in Dr Ernie Lightman's report, *A Community of Interests*.

If the primary purpose of rehabilitative programs is to remain rehabilitative and not become accommodation, it is essential that both the rights of the individual tenant and the rights of the group be considered and that the rehabilitative supports remain as the focus. It is also important to consider that the funding sources for such programs evaluate the program on the rehabilitative outcomes of the participants. Without funding, rehabilitative programs will cease to exist.

We are concerned that if the abovementioned subsections remain as originally proposed, the consequences for our one remaining transitional and rehabilitative residence would in fact be extinction. Under the Landlord and Tenant Act, residents could choose not to participate in the support services of the program but remain a tenant of the property. Eventually, all five beds could be occupied by people who no longer need or want the rehabilitative services we now offer.

While this scenario protects the tenant rights of current occupants, we are deeply concerned that the rights of future participants to receive rehabilitative support services within the safety of supported housing will be violated simply by the fact that the program will no longer have a house from which to operate.

The elimination of rehabilitative programs will have a profound and negative effect on the very participants that they have been designed to service.

Mr Hans Daigeler (Nepean): Thank you for coming and appearing before the committee. I presume you're speaking probably for similar groups in your area. I don't know whether you have a specific mandate to do that. Was there any kind of discussion with similar groups in your area and do they feel the same or are you just speaking for your housing?

Ms Balmain: We're the only psychiatrically based housing program in Perth county.

Mr Daigeler: For the whole county?

Ms Balmain: Yes, so the 90 people whom we currently service, that's it, and the housing stock that is designated for a psychiatric population, that's it.

Mr Daigeler: I think you obviously are making the point that is being made more and more before the committee, and it's a very serious one, that your very existence could be threatened.

Ms Balmain: Yes.

Mr Daigeler: It would seem to me that your case is so obvious that I certainly expect the government to bring in some amendments we can only hope for. Clearly, you're service providers in an area for people who are obviously very vulnerable, but you and people like yourself have to be taken very seriously because you obviously have the good of these people at heart. If you are saying that really this initiative could harm these people, I certainly would expect the government to listen, an NDP government in particular.

After all, you are saying that you're supporting the bill, and it's not going to change the whole purpose of the bill. So it's really a comment I'm making that what you're saying is extremely valid and I certainly hope that the government will listen and will come forward with some substantive amendments that will respect what you're saying and what others have said.

1140

Ms Balmain: Thank you for your support.

Mr Grandmaître: Are your clients being referred to you?

Ms Balmain: Yes, they are, but a number of our referrals are self-referrals now. We have referrals from hospitals, from doctors, from social workers, from other community agencies and from clients themselves.

Mr Grandmaître: At the present time, you have five of those clients who are under the rehabilitative program, right?

Ms Balmain: Right.

Mr Grandmaître: Can you describe these five people?

Ms Balmain: In terms of age, the ages vary. I think the oldest gentleman we have is 50 and the youngest person we have in the house is 25, so it's quite an age gap. It's co-ed, male and female. The house is staffed eight hours a day, based on what they request. We're trying to keep our rehab program flexible. If they begin to have problems or go into crisis, we up the staffing numbers, and on what hours they want the people there. We have 24-hour, around-the-clock pager system where they can access services.

The majority of people living in the program are suffering from a serious mental illness—manic depression, schizophrenia, severe depression—and so we have a group of people who are very needy currently, who are trying to take control over their lives and gain some skills to move into independent living.

They understand what the purpose is of the house. I think what's typically common that we're finding is that group living is not ideal for the majority of the population, that people choose to live in congregate living situations of this type when they're trying to work on a specific issue. It's not generally a long-term thing that you live with four strangers and a staff person wandering in and out most of the time. It seems to be quite clear to everyone who has lived there what the purpose of the program is, that it's rehabilitative and not accommodation.

Mr Grandmaître: Obviously you're not too satisfied with the proposed bill as far as the length of stay is concerned. Did you have an opportunity to approach the ministry on this or the minister to add an exemption?

Ms Balmain: We haven't spoken directly to the minister or whatever. Our understanding has been, up till now, that we haven't needed to operate under the Landlord and Tenant Act, as with most group homes of this type. When all this came about, we started to realize this could be a problem if we had to. What's happening usually is it's the group that functions and decides when people need to leave. If it's violence-related, if it's any kind of physical threats, anything illegal, then we call in the police and they take care of it for us.

Mr Grandmaître: Police?

Ms Balmain: Yes. There are legal avenues with which to do that and to deal with people who are serious threats. We've always operated that way or we've upped the staffing until something happens. That's part of the problem with the legal system, that they can't do anything until something happens.

But otherwise, if it's just that the group doesn't like somebody, we've never evicted anybody based on that. We put the onus back on the group to work it through and to find a way to live together, to come up with a plan of action that they can all live with. So we've never run into the problem where we've just evicted somebody simply because they haven't fit in. We've also, in the group home situation, followed the Landlord and Tenant Act when people haven't paid rents, for example. We've followed that legal process.

Mr Grandmaître: A lengthy process, very lengthy.

Ms Balmain: Yes, it is, and at times we have indeed been burned on the rent because you can't sue somebody who has no money for back rent. So sometimes that hasn't necessarily worked in our favour but we've always given due process. It's always been quite lengthy except in times of violence or threat where we've indeed called the police and somebody's been taken away.

Mr David Johnson: My congratulations on your deputation today, which is a little bit similar to the previous deputation. I think you're encountering the same sorts of problems, but also my congratulations on the

program, obviously an excellent program that's been developed in the Listowel-Stratford area. It's good to see these kinds of programs.

As you were explaining, you have about 90 people in the group at large and some of those people take advantage of the residence that you have. Just so I'm 100% clear on this, you have an apartment project of four single and four shared in Stratford and three single apartments in Listowel. So is that in total 11, we're talking about 11?

Ms Balmain: No, the shared is two people in each, so that's eight—

Mr David Johnson: About 15?

Ms Balmain: Yes. And then we also converted the six-bed group home that used to be high support into two apartments with three people in each, and we follow the Landlord and Tenant Act explicitly in that apartment as well.

Mr David Johnson: Okay. Again, the key word that you're putting forward here is rehabilitation, that your program is really geared to rehabilitation much more than accommodation. It's the rehabilitation part that's the key. Would the rehabilitation apply to all of those units?

Ms Balmain: Well, it does. What we've done is we have flexible portable supports. That means that when you come into the program and you're assigned a community support worker, you may choose to live in the group home for a while and have that worker. What used to happen was when you moved out and lived somewhere else, you had to change workers because there were workers assigned to specific buildings or units or programs.

Now what we do is that worker follows you so that you don't have to, while trying to make an adjustment to any living environment, also get to know somebody else who's going to know all about your life. We link the people up with one worker. In the apartment programs, if people choose to remain there we don't see that as a problem. That worker will just go out and be assigned somebody else in the community and we allow that person to remain in rent-geared-to-income housing.

That's why we don't see the apartment program as being rehabilitative in the traditional sense. All the people currently have a worker. Some see them only once a month; some see them every week or twice a week based on their individual needs and the support level that they require. But we do allow them to remain if they want to and just strictly as an apartment. It's a community apartment. That's part of helping people integrate, to let them understand what the experience is to live independently in the community.

When you live with the landlord, just because you don't want to be friends with your landlord, he doesn't make you leave. We're really trying to show them what the real world's like and what the community's like. We do provide them rehab services when they want them, but it's just not solely linked to their housing option except in the group home.

Mr David Johnson: The concern of course has come up, not with your operation or I suspect with any of the

other operations that'll be making or have made deputations to this committee, but there have been concerns with regard to tenants being evicted without any cause or unjustly or that sort of thing. What sorts of procedures would you go through today to ensure that doesn't happen?

Ms Balmain: Tenants in the group home or in the apartments? Either?

Mr David Johnson: Either.

Ms Balmain: In the apartments we follow the Landlord and Tenant Act, so that's taken care of. With the group home we go back again, unless it's violence where we call in police or a medical officer and have the problem taken care of for us—we just really work with the group.

We're currently having a conflict in the group home—this is very timely—and one person is almost refusing to live with the other one and there's a big carry-on happening. We're having two or three house meetings a week where I'm going in as the coordinator. Normally I don't get involved in the front-line delivery, but I come in as a facilitator and I'm trying to be the mediator and keep peace and show them that if you are living with five roommates at college you don't have the option of just moving and carrying on. Sometimes you have to really struggle to work things through.

This is what we're working on with them now. When it's personality conflicts, "This is the real world." If you want the rehab program you can't just come up to us and say, "Right, I want her out; I don't like her," just because she talks too much. The reality is you're all here for a reason; you're here to work on something and you need to find a way to either live together or you can choose to leave if you don't like the people who are here.

Mr David Johnson: It sounds to me like you have a system that's very sensitive to the needs of the individual but you also have to recognize the needs of the group.

Ms Balmain: Right. But it's really geared to teaching them about life.

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Mr David Johnson: I just wanted to shift to another aspect. At the top of the third page of your deputation, you say, "We also recommend that the rewording of this subsection include a clause stating that the definition does not affect any provision of the General Welfare Assistance Act or the Family Benefits Act." Is your concern there that the residents may be excluded from welfare or family benefits?

Ms Balmain: Right, because of principal or permanent residence. That's what we were concerned about. My understanding from my colleagues in Metro is that you don't need to have a permanent principal address to receive general welfare, but that's not the case where we are. Stratford is small enough that we know some of the people in the department, so we can say, if the person is Joe: "Joe is coming over. We need him to have a source of income before we can allow him into our ministry-run, rent-geared-to-income program, but you need to have an address." So it's kind of like, "You give him welfare and we promise we're letting him into our program," and it

all happens the same day. But that's because we know people.

That's not the case in some of the larger areas of the colleagues I've spoken to, where you don't have those connections and people aren't that understanding. I was speaking more to our concern and to the concern of the larger areas. We've worked within this framework, we've managed to find a way, but who knows what staff will change over there? It's not always that easy with red tape. So we were wanting to protect the rights of clients.

Mr David Johnson: Your deputation highlights the need for flexibility in terms of the period of time for rehabilitation. In your case, you've indicated it could take up to two years. I don't know if you're familiar with Eden House. I think they've indicated an average of 2.4 years. There was another group this morning that indicated perhaps 18 months. It shows that if you try to pin it down, it may not work. So flexibility I guess is the key issue there.

Ms Balmain: Right. We've had people leave in under a year. We've had people leave in three months because they didn't like the group living situation, but it certainly wasn't because all their rehab needs were met.

When you look at the serious mental illnesses they're coming to us with, like schizophrenia, it totally shatters their lives. Boys often get schizophrenia in their late teens. I was learning to cook and live on my own and balance my bank account and everything while they were suffering a psychotic episode and never learned those things. So then they come out of hospital, they come into our program and they have to take six months just to get it together, just to feel okay on their medications again and maybe start talking to people and come to terms with the fact that they have suffered a serious, debilitating breakdown.

Once they get it together and feel a little bit more comfortable again and trust people, then they start to work on things like: "Oh, yes, banking. Somebody else has been doing that for me while I was in hospital. I've got to learn to do that. I've got to learn to cook if I'm going to live on my own. I don't even know how to do laundry." So they need that six months just to get it together.

I don't think a lot of the general population understand that. A lot of people are very familiar with drug rehab or alcohol rehab. You leave your home and your family, you go in for six weeks, you dry out, you do your treatment and you go back home. It's not like that with the people who are coming into our programs. It's very different, and because mental health is still a little taboo, it's not talked about, so a lot of people don't understand.

I think that's part of what I saw in some of the amendments. In all honesty, it's quite commendable and I understand where the standards were set and why, but I think it's really just that people don't understand mental health, that it's different and that there's a different length of time required to recover from these kinds of illnesses. It's not just an addiction.

Mr Gary Wilson: Thanks very much, Ms Balmain, for such a graphic account, because it really does help

with our understanding of some of these issues. Of course, we're very pleased to hear of your support for Bill 120, your experience with the Landlord and Tenant Act in the residences that you do have and your concern about the extension to the group homes.

I'd like to look at that for a moment. It seems to me that the issue as you described it, the people who are there, or some of them anyway, and some of the circumstances they're under, that they missed important parts of their experience with daily living, that sounds to me like an aspect of accommodation. This is what the bill tries to do, to guarantee rights for tenants where they live, their accommodation.

We've heard a lot of reaction to the six-month provision, but I'm wondering whether, again thinking of the experiences that you say some of the people in the group home would have, the accommodation wouldn't be an important part of the rehabilitation. To say, for instance, in the case that you describe, some people have trouble living with another and they want them out of there, wouldn't a response be, "Well, it's their right to be here because it's their residence and there are provisions in the Landlord and Tenant Act that guarantee them that place"?

Ms Balmain: Actually, that's not usually the stand we take. We do say it's their right, but we take it from the stand within the group home that it's their right to receive the service too, that they are also trying to recover from a debilitating illness. So we're all allowed to live here, and you can't just say, "I don't like you," or "I don't like the way you dress, and out you go." They have a right to that service. We don't talk about it within the group home as a right to tenancy; we always refer it back to the right to service. That's reiterated in my last points.

There are only five beds of the kind in Perth county, and we operate them. That's not a very high percentage of the population—that's very low—and while group homes are sort of on their way out and we're recognizing that you don't need a 24-hour-support group home in every town, that not everybody wants to live that way so we're providing more apartment options, there still is a certain percentage of the population, and we think we service it well with five in Perth county, that needs this kind of service and wants this kind of service, wants the safety and support of a supported living situation.

But if their rights to receive this service when they come in change to their rights to stay there as a tenant long after they've used the service, if those rights change, then gradually, one by one, those beds will all be taken up. We can't operate the same service any more, because we don't have the kind of wealth that we can go just buy another group home. We can't just say, "Right, we'll buy another building and start it all over again," and then those five people choose to live there. That's our problem, that down the road there are future people who deserve the right to this service.

Mr Gary Wilson: Although you did say they've used the service, which implies that they've benefited from the service. So I'm not sure how you couldn't say that they have successfully at least used the service if they want to stay, which sounds as though they've outlived their need for the group home.

Ms Balmain: It might be a person who chooses to live congregately. They say, "Well, I've used the services but, boy, I like it here, it's cushy." Think about it: The Ministry of Health buys all the bedding and everything else in the house and the Ministry of Housing provides rent-gear-to-income. But we can help them find congregate living somewhere else in the community.

Mr Gary Wilson: You do that now, I take it.

Ms Balmain: Yes.

Mr Gary Wilson: So your only concern is that it would be difficult to move them because of the Landlord and Tenant Act, they would resist that. How do you get around that now when they resist?

Ms Balmain: They haven't yet.

Mr Gary Wilson: Oh, no one's resisted.

Ms Balmain: No. Think about living with five people in a psych rehab program. Generally, when people feel like they're getting well or they're moving ahead, their sign to themselves that they're getting well and moving ahead is that you move out of that high staffing, because it's not just the five people.

Mr Gary Wilson: How would the LTA affect that?

Ms Balmain: Because you could get one person—that's the reality—who just says, "No way."

Mr Gary Wilson: But it's never happened so far. I think you just said that, haven't you?

Ms Balmain: No, it hasn't happened so far, but we've only been open since 1988 and there are other programs that have been open longer that have experienced that. I think part of this provision is, if it becomes law and that does happen, what are we going to do?

Mr Gary Wilson: Again, though, it hasn't happened much to this point, never in your experience, and the idea is for people to move on. You've suggested some of the reasons they might want to move from the congregate setting. So that's part of it, and you know there are homes where the setting isn't so protective of the clients. So that's part of what we are having to consider in our deliberations.

Mr Gordon Mills (Durham East): I'd just like to thank you for coming. Contrary to the suggestion by my colleagues over there, the purpose of these committees is to listen to the presenters, to listen to what they say, and some of the things that you've said are recurring. You've made some interesting points that I didn't realize before.

But I would like to ask you one question, since my time is limited and Mr Grandmaitre asked some of the questions, as did Mr Johnson, that I was going to ask. How many times since 1988 have you physically had to say, "This person has got to go"? I just want to track back. We've had people like you here before with these homes. They'd say, "You know, this is terrible when you have to call the police and you have to do that."

But I heard you, and that doesn't seem to be much of a problem with the way you operate, that you do call the police and do these things. Having said that, how many people since you've been in operation have you had to tell to get out and that's the end of it and they can't come back?

Ms Balmain: Five. That also included the time for three years when we ran the high-support group home, so it hasn't been a very high number that we've had to do that with. We've usually been able to work something out where they've left voluntarily or they've signed themselves into the hospital voluntarily before the police came to the actual premises. But we have called when it's been serious suicide attempts where the police and the ambulance had to be called in, or violence. One was drugs on the premises.

Mr Mills: Wouldn't you agree though that if the Landlord and Tenant Act was in place, you would still have that option to do what you do?

Ms Balmain: Yes, I believe that. We do that with the shared apartments, because if the two roommates aren't getting along, we try and work with them, but we don't evict anybody.

We tell them: "If you're physically concerned for your safety, if you think things are being stolen from you, if they're bringing drugs into the house, we'll help you access the police and we'll support you through that process of laying charges or whatever you need to do, because that's how it works in the real world. If you weren't living in my apartment"—we only have a few apartments in Stratford—"if you were living with some other landlord, that's what you would have to do."

We're not doing them any favours by protecting them from what really happens in the world. We haven't taught them anything then. So we work with people to understand: "This is the reality, this is how I have to live and this is how you are going to have to live if you want to integrate into the community."

Mr Mills: Thank you, Mr Chair, for your indulgence.

The Chair: Thank you, Mr Mills, for your assistance.

Thank you very much for coming today. We will reconvene at 1:55. We will be hearing deputations from 2 until 5 o'clock.

The committee recessed from 1203 to 1402.

PARKDALE COMMUNITY LEGAL SERVICES
WEST END PSYCHIATRIC SURVIVORS

The Chair: The first presentation this afternoon is from the Parkdale Community Legal Services, Elinor Mahoney. Good afternoon.

Ms Elinor Mahoney: Good afternoon. I'm Elinor Mahoney and this is Lilith Finkler. Lilith is from the West End Psychiatric Survivors, a group associated with our office in Parkdale. I'm going to be doing a presentation on behalf of the legal clinic, and because West End Psychiatric Survivors was unable to get its own time slot, Lilith is sharing our time slot. We're going to take most of the half-hour doing our presentation. We figure it's probably more important for you to hear from us than for us to hear from you.

The Chair: The Chair, of course, will not make a comment.

Ms Elinor Mahoney: Of course. I'm going to take approximately 12 minutes for mine and then Lilith will take over.

We're here today to inject a little reality into these

proceedings. It's unfortunate that we don't have anybody from the opposition here. However, I think even the governing party needs to know a little bit about the lives of people who stand to benefit most from Bill 120.

You won't see these people at the committee hearings. Few know of the bill's existence. Many are too frail and infirm to leave their homes, or they fear retribution from their landlords or from their municipalities. Most are just too busy trying to cope with the daily struggle of life in a society that ignores them. Our purpose is to bring their reality here to you.

We are also here to burst the myths that have been floating around in this committee room, myths that belittle and defame the people Bill 120 is designed to help. Some of these myths have been presented to you in soft, polite words by soft, polite people who operate rental housing that is currently unregulated by law. Others have been brought here by loud-mouth mayors whose yahoo comments generate a lot of publicity. If you believe these stories, you must wonder why the government's bothering to introduce Bill 120. We want to help you distinguish the myths from the reality so that you will join us in supporting the bill.

Myth 1: Tenants who live in basement apartments are child molesters who urinate in the backyard.

It is a sad comment on the voters of North York that they are represented by a mayor who has chosen to portray his city's tenants so negatively. We don't really believe, and we hope you don't, that there is a qualitative difference in moral standards and behaviour between home owners and tenants, or between tenants in high-rises, tenants above ground and tenants below ground. Or maybe it's just North York tenants. The truth is that many of the tenants in basement apartments choose this form of housing because it's an affordable way to be a part of a single-family neighbourhood. Far from contaminating a community with an alien lifestyle, they blend in so well they are practically invisible. How else can one explain the proliferation of basement apartments in cities which are so unwelcoming to them?

The second myth we'd like to address is that tenants who live in basement apartments will thwart their municipality's ability to plan and provide services.

Apparently, when tenants aren't urinating in the backyard, they are monopolizing the local libraries, schools and streets. This is the argument put forth by the mayors of the greater Toronto area. They say they won't be able to cope if basement apartments are legalized in areas where services have been based on a single-family occupancy. Their principle is that planning should determine use, not vice versa. We can only speculate as to what they will do next: perhaps expropriate the properties of all empty-nesters and childless households? After all, they skew the demographics of these planners. Or perhaps they should pass a bylaw requiring each household to have 2.5 children.

Stop and think for a minute. Cities grow and change with or without the permission of an official plan. Good planners don't try to make the world fit their model; they predict and respond to the needs of their communities.

Let's look at the reality. Ontario municipalities have been discriminating against tenants for decades, and it's time somebody makes them stop. Tenants are held hostage by their landlords as long as municipalities are allowed to ban accessory units.

When I first started at our legal clinic, we had dozens of clients living in basement apartments. Often their units lacked heat or were in extremely bad repair. There was very little we could do to help them, because if we complained to the city, the city would evict them and then eventually the apartment would be re-rented. Now basement apartments are legal in Toronto, and guess what? The libraries, the schools and the streets are coping and these units are far better maintained than they used to be. We support the province in putting an end to exclusionary zoning practices throughout the province.

Myth 3, and this is a myth we all cherish: We look after people who can't look after themselves.

If only we did. Unfortunately, this doesn't always happen. Not everybody has a supportive family. Sometimes people require care that their family can't give them or afford to provide. Long-term care facilities are overcrowded and, although our province has a policy of deinstitutionalization, and has had so through the Conservatives, through the Liberals and through the New Democratic Party, none of those parties has brought a coherent system of supports and services for people who are sent back to their community. The reality is that tens of thousands of our province's most vulnerable adults must fend for themselves.

Myth 4: People who offer accommodation and care to vulnerable adults have their best interests at heart and can be trusted to remain unregulated.

First, we hear the operators are upscale retirement homes who resent being lumped together with the unscrupulous slumlords of south Parkdale. They say they provide good accommodation and care. They say they provide family conferences to determine how best to address their residents' needs and only raise rents by a modest amount. They claim regulation is unnecessary and would hamper their ability to manage effectively.

But let's look at the reality. Certainly if these upscale operations are generally clean and well maintained, it's because the rents are high enough that they would be derelict if they weren't. When Doctor Dan and Nurse Jane Fuzzy Wuzzy appear at these hearings to plead their case, you should read between the lines. They seek the flexibility to transfer patients requiring additional care to a more suitable place. Translate that. Tenants can only stay as long as they are healthy enough to survive with the care their landlord is prepared to provide to them. If a tenant requires additional care, they must move even if they would prefer to stay there and have portable services brought in. That's what these people are really telling you.

They want to be able to control who is in and who is out, so they can have the tenants they want and only as long as they want them. Don't give them that power. Their tenants, most of whom are frail and infirm, should have the right to remain in their home as long as they are able or as competent as they can be to do so.

Then we have the non-profit housing providers. They too resent being compared to the slumlords of south Parkdale. Years ago our clinic supported the establishment of several non-profit housing providers. We knew they would provide clean and well-maintained alternatives for low-income roomers. But what we didn't anticipate was that many of their practices as landlords would be as arbitrary and as unfair as the worst slumlord.

1410

We have seen church-based non-profits in our community lock out tenants in the middle of winter because they were behind in the rent. Some of our clients have been threatened with removal because of disputes about their rent subsidies. As a member of the Coalition for the Protection of Roomers and Rental Housing, our clinic has seen or heard many more examples of ongoing harassment. Infiltrating a tenants' meeting, changing rules to restrict a tenant's guests and threatening the tenant with a lawsuit are just some of the tactics of one non-profit, church-based, government-funded landlord you will hear from later today.

All non-profits do not act like this. There are several within our coalition and throughout Metro which voluntarily abide by the Landlord and Tenant Act. They have our respect and they deserve yours, and their example proves that extending tenant protection through Bill 120 is viable. Unfortunately, the actions of others prove that Bill 120 is also necessary.

Myth number 5: A fast-track eviction or interim removal process is needed in accommodation where care is provided.

This is a myth that's been presented by virtually every landlord who has come here. They claim they are accommodating the hard to house and that they need to have special rules both to get rid of violent tenants and to protect the vulnerable adults in their care. But let's take a little closer look at this.

How many of these tenants are really hard to house? Most of the target population are senior citizens, people with disabilities and low-income roomers. Only a very, very small portion of that group would by any stretch of the imagination be termed hard to house. There has been very little evidence produced, either from Dr Lightman in his report or before this committee, other than a few anecdotes, to say that of that portion that might be termed hard to house, people actually are hard to house and are causing problems. Out of 47,000 people we want to have rights extended to, how many people are really hard to house? Should we be changing laws to address a few people or should we be looking at other alternatives?

I think we should be looking at other alternatives to the Landlord and Tenant Act. We should be looking at portable crisis units and improved police response. Those are two better ways. So is innovative housing design. Ask yourself, why do we make the hard to house live in shared accommodation and then insist that they can't have the same rights as other tenants because they share living quarters and they're more vulnerable to each other's actions? Why do we do that? Isn't that sort of perverse? Maybe we need to look at the housing design as a much more efficient way of dealing with the prob-

lems of crisis, rather than say let's just take away their rights.

I put some other reasons in my brief, which you can read during your coffee break.

The reality is that there is no compelling reason to give special removal powers to care home operators, but there is a compelling reason not to. The intention of Bill 120 is to end the law's discrimination between tenants living in rental accommodation where they receive care and the rest of the tenants in Ontario. That discrimination we are currently experiencing has resulted in several complaints being laid at the Human Rights Commission. If you establish separate rules for tenants in care homes, you're not going to end this discrimination; you're going to codify it into law. It's our view that the creation of a fast-track eviction removal process for seniors or disabled tenants or low-income tenants would violate the Ontario Human Rights Code and be struck down.

Myth number 6: Bill 120 will only help and not hurt tenants.

Basically, we like the bill. We've fought for this bill since 1986 at Parkdale Community Legal Services, when we founded the Coalition for the Protection of Roomers and Rental Housing, and we want this bill to pass, make no mistake about it. But there's one very serious problem in it that means our clinic cannot support the bill as it is currently drafted. Because meals are not covered under rent control and because there are very few and flexible rules about registering as a care home facility, we fear you are going to eliminate with one stroke of the pen a whole category of housing we have in south Parkdale and throughout Metro: boarding homes.

Some of you may have lived in boarding homes in your younger days—I certainly have—where you get room and board for a monthly or a weekly charge. Currently, boarding homes are covered under the Landlord and Tenant Act and under rent control, both the meal charges and the accommodation. It's so easy to call yourself a care home that many boarding home operators could decide to register as a care home. The reason there would be a financial incentive to do so is that then the costs of their meals would no longer be regulated by rent control.

If you do that, you're going to eliminate a whole class of housing called boarding homes, which serves quite a varied population, not just people requiring care. We're going to see a situation where initially the rents registered will be the same as those currently charged, but then after that, as the economy permits, landlords will be able to raise their rents sky-high, as often and as frequently and as high as they want.

Mr Cameron Jackson (Burlington South): Not the rent. You meant the meal charges.

Ms Elinor Mahoney: You see, we consider that if the tenant is paying rent now for room and board, to them, they're still going to be paying the one cheque to the landlord. To the tenant, it's going to be the rent cheque, right? I use the term quite loosely there, but I take your point.

We think you should take another look at the meal

issue, and we hope you will agree that meals should be covered under rent control. This will take away the only financial incentive, really, for a non-care home operator to decide to characterize his place as a care home.

With that one caveat, our clinic supports Bill 120. We support the thrust behind it, and we hope the opposition parties, even though they have concerns, will give support to this to alleviate the plight many people find themselves in now.

Our brief focused on destroying some of the myths that abounded at the hearings, but I promised to bring you some reality from south Parkdale. We are sharing our half-hour with West End Psychiatric Survivors, a community group in Parkdale which was unable to get its own time slot, so I'll turn you over to Lilith Finkler, my colleague.

Ms Lilith Finkler: Just to clarify any confusion, I also work as a community legal worker at Parkdale. I am also a member of West End Psychiatric Survivors, and I am speaking in that second capacity here today.

West End Survivors is a support and political action group that has been meeting regularly for almost two years. We organized a very successful Psychiatric Survivor Pride Day in September 1993 and are currently working on a Psychiatric Survivor Festival which will take place in April 1994.

We are a varied group, some of us working full-time, some part-time, some living on savings, others on social assistance. We live in apartments, private non-profits, rooming houses, cooperatives and boarding homes.

West End Survivors supports Bill 120. Inclusion of care facilities and non-profit housing under the protection of the Landlord and Tenant Act is a positive step.

We do not support changes which would allow boarding home operators to charge for food separately because of the material Elinor addressed earlier. This would result in economic evictions and lessen the protection we already have under the act.

Second, we wish to support the government in its rejection of fast-track evictions. Persons with a psychiatric history are no more violent than any other group in society. Therefore, any attempt to institute such statutory provisions would have a differential negative impact on an already vulnerable and stigmatized group. The Criminal Code and the Mental Health Act already contain provisions for dealing with situations where someone is violent or emotionally unstable. We are not necessarily stating here that we support the use of the those provisions uncritically, however. None the less, such laws already exist and new ones need not be created.

While the above accurately summarizes our legal position, we will not concentrate on statutory recommendations. We reject the notion of legal arguments, seeing the exercise largely as frivolous and unimportant.

Unfortunately, laws which assert basic human rights are rarely enforceable when survivors are concerned. Theft, for example, is ostensibly a crime punishable by law. None the less, people steal from our meagre allowances every day. At one Habitat-run boarding home in Parkdale, three tenants have complained separately of

theft by both staff and residents. Two of the complainants have other disabilities in addition to their psychiatric histories. According to the personal care bylaw, each boarding home tenant is entitled to a locker and a key. Tenants store their money and other personal possessions in a small, narrow cupboard. Tenants often wear the key on a string around their neck. In each case described to me, a staff person or fellow resident lifted the key from around the person's neck while they slept or appeared to be sleeping, removed money from the locker and then returned the key. Tenants were afraid to complain to the operator, especially when the thief was a staff person.

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If such random crimes occur daily and no punishment is ever rendered, why should we as psychiatric survivors have any more faith in Bill 120 than we do in any other law? Laws are passed and perpetuated for the benefit of those who control society. Psychiatric survivors, especially those living in Parkdale, are at the lowest rung. We are to a great extent the forgotten people. We cannot be content with statutory changes, interim measures and good case law decisions. Our people are dying in decrepit, run-down buildings known as care homes, in the back wards of psychiatric institutions, and on the streets of Toronto.

At least seven people still live in a mice- and cockroach-infested "home" called 17 Maynard Avenue. Some tenants have physical as well as psychiatric disabilities. One tenant is blind. Another uses a wheelchair. In April 1993, I took photos and swore an affidavit detailing the horrendous state of disrepair. In July an article appeared on the front page of the Toronto Star. In August the landlord, Anne Wallen, was convicted under the personal care bylaw and fined \$500. In September 1993, a licensing review took place and at least seven witnesses attested to the dangerous physical conditions at the house. This includes numerous violations of the Ontario Fire Code.

One former tenant quoted in the Star—the article, by the way, is appended to this document—described being hospitalized after sleeping on a lice-infested bed. The lice had burrowed their way deep underneath his skin such that it required over a month to delouse him. I had attempted to obtain a new bed from family benefits but was informed that it was the responsibility of the landlord to provide it. The tenant was afraid to complain because he did not want to be thrown out of his home. Landlord and Tenant Act or no Landlord and Tenant Act, the fear of garbage bag evictions continues to be real for many psychiatric survivors. The man in question, by the way, is a member of our group.

We are deinstitutionalized without adequate support, we are heavily drugged to alter our mood and we are deemed delusional when we complain. Given the circumstances, how do we assert ourselves?

I often sit in the mall—it's an area where patients will often smoke, hang out—at Queen Street Mental Health Centre. Again and again I hear stories of women who are physically or sexually assaulted in their boarding homes, where they may live three or four to a room. Assault is a crime, but when they come forward, police and crown prosecutors claim they are not credible. Police cannot be

trusted to enforce the laws that are designed to protect us. I have heard too many psychiatric survivors speak of being roughed up by the police. The death of Dominic Sabatino leaves all survivors wondering which one of us is next.

If laws are not enforceable and impact upon us only negatively, of what benefit are laws to us? It is the attitude behind the laws that must change. Instead of allocating funds to lawyers, give the money to survivors. Increase the amount of family benefits rather than devising creative ways to cut people off. There is no point in providing more rights in our housing if we will not be able to pay the shelter costs.

Build more affordable housing so that we have a choice in where we live. We do not want to live in shared accommodation. Workers who are paid to help us live alone or with families or friends. They live in independent, self-contained units. Why is housing for us shared accommodation? We want and need privacy too. Why is it expected that we develop social skills in such an environment? If it is so "therapeutic," why do the workers not inhabit such accommodation themselves?

Take the money used to pay the social workers who control our lives and use it to provide community economic development initiatives. This will allow us some financial independence. Our psychological wellbeing, like that of others, is tied to economic stability.

One cannot view Bill 120 in isolation. An analysis of power is central to the discussion of any proposed set of laws. Psychiatric survivors—poor, labelled and marginalized—will not benefit from the rearrangement of words on a page. We require a much more fundamental shift in societal attitudes and practices.

Do not empty out the psychiatric hospitals in this province until sufficient non-profit housing is available. Increase family benefits so that we can live above the poverty line. Stop the forced drugging which chemically lobotomizes us and renders us physically incapable of fighting back.

Institute a firm commitment to the Graham report, which mandated a partnership between consumer-survivors and professionals. Psychiatric survivors are a group that will be disproportionately affected by this legislation. Invite other autonomous survivor groups across Ontario to speak. West End Psychiatric Survivors is only one group of many. All of our voices must be heard.

Mr Jackson: Lilith, thank you for your presentation, and Elinor, it's good to see you again. We worked many years ago on aspects of discriminatory housing and we agreed on a lot of things in those days. I don't know that I can agree with you on many of your points, but I know you present them with great conviction.

I'm just going to leave you with a comment, because you've covered an awful lot of turf here. Where we fundamentally disagree—I think we have approached this whole thing from the wrong way, and on page 4, Lilith, your report gives me much encouragement. I happen to believe that rent control is a sort of accommodation cost shelter for the rich and it always has been. I really do believe that the subsidy, like the support, should flow

with the individual, not the building and the bricks and mortar.

Ms Finkler: That's not my position, however.

Mr Jackson: I know it's not your position, but you do make the point very eloquently and I wanted to commend you for it. Elinor knows; we've had this debate many a time.

Ms Elinor Mahoney: And will again.

Mr Jackson: That's fine. It's just that I would like to see more of the resources go there instead of the subsidy known as rent control for far too many Ontarians. I'll continue with that position because, as your report points out, if rent control was working, you wouldn't have this litany of concerns you're expressing. You've even suggested you have serious reservations about having it included in the rent control legislation.

Ms Elinor Mahoney: No, I said exactly the opposite. I said meals should be included. Anyway, you have a copy of our brief; you can read it at your leisure.

Mr Owens: Thank you, Ms Mahoney and Ms Finkler. It's nice to see you both again, and you presented a side that seems to be not well publicized to date in terms of the hearings.

Elinor, you've audited the hearings essentially since the beginning. People seem to think that basement apartments are a problem in Leaside or Ottawa, Rockcliffe or some other parts of the province; that there is only a problem with respect to affluent areas. But my concern is areas like south Parkdale and ensuring that survivors have, as a right, safe housing and are not tossed out into the street summarily.

As I've said before, there's no need for an abbreviated eviction process. The problem is that we already have an abbreviated eviction process and what we need to be doing is to give people rights regardless of whether they have "psychiatric" or developmental disabilities. That should be no reason to have two standards of law in this province based on a person's competence or lack thereof.

Thank you for your presentation, and I look forward to working with you on your concerns.

Ms Finkler: Thank you for your support.

Mr Daigeler: The position of the witnesses is quite clear. I don't think we have any questions for clarification. They're quite straightforward and obviously they're very much in support.

Ms Elinor Mahoney: And we hope we'll know your position soon too.

Mr Daigeler: It's not quite as clear as yours.

The Chair: We do have votes in this place occasionally. That helps. Thank you very much for appearing. We appreciated your comments.

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TENANT ADVOCACY GROUP

Mr Kevin Smith: Thank you, Mr Chair and members of the committee. My name is Kevin Smith, and I'm a member of the Tenant Advocacy Group. I have been a member for about 10 years. The group has been in existence for about 10 years and it's been advocating and working in the area of residential tenancy law for that

time. Some of the members have even longer experience working in the area of residential tenancy law.

TAG is a group of tenant advocates, and we meet on a monthly basis. TAG is made up of lawyers, community legal workers from community legal clinics as well as others involved in the tenant movement, such as the Federation of Metro Tenants' Associations. You could say that TAG has a lot of depth on the bench in terms of knowledge of the residential tenancy laws of this province.

TAG has been studying the issues of exemptions in the Landlord and Tenant Act and discriminatory zoning for the past couple of years.

In my presentation, I want to say what the government seems to state as its goals for this legislation, what TAG's position is on this legislation, how TAG feels the government met the goals it set for itself, how TAG feels those goals don't go far enough, and what TAG would recommend should be included in this legislation.

In terms of the goals, the government stated in its press release that this legislation would provide that "a person living in a care home or an apartment in a house should enjoy the same rights, the same security and the same protection under the law as other tenants in this province."

We are in complete agreement with that statement. However, we are concerned that this legislation does not properly do this as far as care homes are concerned; in fact, that the result of this legislation is to take away rights from some boarding houses that were formerly covered by the legislation.

TAG believes all tenants should be protected from having their homes taken away from them due to discriminatory zoning and by other violations of their landlords. TAG is also concerned, as part of this legislation deals with increasing the powers of building inspectors, that it actually puts some tenants at greater risk than they would otherwise have been.

The first part of the legislation deals with amendments to the Landlord and Tenant Act. You've heard from other groups why these amendments are necessary and you've heard from Dr Lightman why they're necessary. As Dr Lightman noted, accommodation for adults who may want or require certain personal care services is none the less primarily residential in nature, and those residents should have their protection under the residential laws of this province: the Landlord and Tenant Act, the Rent Control Act and the Rental Housing Protection Act. But as matters stand, residents living in this type of accommodation lack the basic regulatory support and consumer protections afforded tenants in other types of residential housing.

When roomers were added to the Landlord and Tenant Act in 1987—and I use the word "added" loosely because it's always been TAG's position that roomers were covered by the Landlord and Tenant Act from the word go, were always tenants. None the less, there was enough vagueness in the legal definition of a roomer and in court interpretations that there was an amendment to clarify the point and to say specifically that roomers are tenants. The

amendment to the definition in the Landlord and Tenant Act added something else at the same time which became a problem. We had little time to respond to those amendments, and those are the amendments this act deals with in terms of exemptions for care, exemptions for rehab and therapy and exemptions because accommodation is subject to various forms of legislation.

At the time, in 1987, we were reassured by the government, "Well, that's just to deal with halfway houses and certain types of institutions you just wouldn't want in the Landlord and Tenant Act." As I said, at the time we didn't have enough time to look into that question in too great detail. However, it's become clear over the years that those exemptions do far more than that.

At the same time, over the years there have been new forms of accommodation springing up, especially non-profit accommodation, that can claim exemptions under those sections, and they should not be able to do so. It's about time these loopholes were closed, and we are very happy that this legislation will to a large extent do that.

As you've heard in various presentations up until this point, some landlords have claimed this exemption and have thrown tenants out with their belongings in garbage bags. These garbage bag evictions simply have to stop.

For many non-profits, providing accommodation is providing it to somebody for their own good, or they imply that the landlord is answering to a higher authority, which seems to justify their trampling roughshod over the tenants' rights. Any laudable intention on the part of a non-profit landlord, in our view, does not negate the need for basic substantive and procedural protections for the tenants subject to their beneficence.

As a tenant advocate, I have found and TAG members have found that these non-profit housing situations can sometimes offer the greatest challenge to us. Those living in this type of accommodation often are unlikely to make waves with the person providing their housing when they were in desperate need of housing in the first place.

Some, and again not all, of those providing this kind of accommodation can be deaf to the legitimate concerns of their tenants. This can be partly due to a rather paternalistic notion that their charges should be grateful for the charity that's being bestowed upon them and partly because of a presumption that all the needs of their charges are looked after, in the care giver's view: What could they possibly have to complain about? You don't bite the hand that feeds you, they might add.

Unfortunately, this attitude becomes part of the corporate culture in many of these establishments. Someone who simply stands up for some basic dignity can be ostracized, labelled as a troublemaker or as hard to house when they may simply be saying they don't want the same amount of direct intrusion in their daily lives that others in the same facility might require. Faced with the necessity of securing new housing, these tenants who have been arbitrarily dispossessed are unlikely to go to court and unlikely to seek protection for their rights. Victimized once by the landlords, victimized again by labels, burdened by the premise that they have no rights to secure housing and then forced to overcome these hurdles in court, they simply give up. I'm there to help

them. I'm frustrated. I say, "Let's go; we'll fight," and they say, "Well, I've got to find some place to live," and that can often be the end of the matter.

Lightman concluded that justification for this broad exemption could not be sustained and that these garbage bag evictions could not continue. TAG heartily agrees. We therefore agree with the removal of the care exemption in this legislation. There is nothing in the nature of care premises that is inconsistent with the recognition that tenants who live in these premises are entitled to the same rights other tenants enjoy.

Arguments that contract law will help tenants in these situations are spurious at best. Our society has long acknowledged that the regulation of the relationship of residential landlords and tenants is necessary to balance the inequality of bargaining power and interests of those two parties. What possible reason could there be for making this any less imperative in a housing sector that caters to people who want or need something more?

In terms of the definition of "care services" in this bill to go into the Landlord and Tenant Act, when I first read the first two sections of the bill I thought: Why are they here? They're exempting care premises altogether or removing them from the exemption so that from now on care premises are just residential premises. They're now just in the Landlord and Tenant Act, so why do you need a definition of "care services" in the Landlord and Tenant Act when they're just residential premises anyway? It struck me that these two sections seemed redundant.

However, we've reconsidered that position and we think that definition of "care services" should stay. It's a clear statement of inclusion. It's a clear recognition of a norm or principle that the right to secure housing is worthy of protection for those tenants.

The second issue has to do with the exemption for rehab and therapy. It's a very narrow definition in the bill, and we support the creation of this very narrow and very specific definition of what will be exempt: that occupied solely for the purposes of short-term rehabilitative and therapeutic services. These strict requirements will ensure that receipt of those services is the sole purpose for these occupancy arrangements.

In TAG's view, all those conditions are necessary to ensure that residential rental housing remains subject to the law and that only truly non-residential accommodation is exempt.

There are a number of exemptions, as I mentioned, where the accommodation is subject to various acts such as the Ministry of Health Act, the Ministry of Community and Social Services Act, the Homes for Special Care Act and the Homes for Retarded Persons Act. TAG's view is that the whole notion of exempting residential accommodation subject to other legislation may only be justifiable where another regime provides adequate measures of regulation and protection for the interests of those parties.

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As far as the amendments to that section and a number of other amendments are concerned, we're frankly a little baffled at the way the legislation has been drafted and the inconsistency in the amendments to the Landlord and

Tenant Act, the Rent Control Act and the Rental Housing Protection Act. In a schedule to our brief, we set out these amendments in a table. We simply don't understand, in some instances, why there are distinctions, and we would call upon the government to justify those distinctions.

The next issue is the subletting of care premises. There's been some suggestion by care providers that you can't let those tenants have the same rights as other tenants to sublet those premises because they were intended for people who need care in the first place and they can't just choose another tenant to sublet to; that they're going to lose that type of accommodation for people who need those services.

We recognize that tenants who live in care homes may have needs, separate from their housing, that are distinct. Under the current Landlord and Tenant Act, a landlord can require that a tenant obtain the landlord's consent to sublet. There's a proviso that consent cannot be arbitrarily or unreasonably withheld, and that consent can be reviewed by the court.

In our view, that provision will provide protection for care providers in this situation. We believe the courts will determine that a reasonable ground for withholding consent is that the sublessee or the assignee lacks the need of those care services. TAG's view is that this built-in balancing of rights will meet those concerns expressed by care providers. We do not believe there should be any distinction between classes of tenants unless it is demonstrably justified that the government should permit such a distinction.

In terms of the exclusion of meals from the definition of rent, we can understand why that was done: The definition of rent in the Landlord and Tenant Act does not include care services or meals. On the one hand, it's a good thing, because tenants won't be evicted; they won't be considered to be in arrears of rent if they haven't paid for their care services or their meals for some reason. However, at the same time, this is inconsistent with subsection 121(4) of the Landlord and Tenant Act, which lists food as a vital service, and any deliberate withholding or interference with the supply of food is a breach of this statutory obligation and makes the landlord liable to a fine on conviction.

We wonder how food could be considered a vital service but, at the same time, that payment for that food is not part of the rent. There is also no reasonable mechanism to enforce these rights and obligations and no summary remedy. A vulnerable tenant who is having their meals withheld would have to lay an information before a justice of the peace to have a conviction under that section, and they would have to apply to the Ontario Court (General Division) for injunctive relief to get their meals given to them. I can't believe this is a suggestion the government would make as a remedy for these people.

Another concern in terms of the Landlord and Tenant Act is, frankly, that this legislation creates a whole bunch of new landlords and new tenants—amateur landlords. We are concerned that these landlords are going to be facing a new regulatory framework for their relationships

for the first time and won't have the resources to ensure that they do not misuse their powers.

The amendments for removing the care facilities, the amendments removing the exemption for premises funded under certain acts, the amendments restricting the rehab and therapy exemption and the amendments allowing basement apartments, or one apartment in a house, are all going to create new landlords.

It is our experience that it is often the non-profit landlords and the small, what I call in-house landlords who make the worst landlords. For all the reasons I mentioned earlier, non-profits have a corporate culture in many instances, and we believe an education and advocacy program is absolutely necessary for tenants in that type of accommodation.

For most small landlords with an apartment in their house, they often come to court and they tell me in the hallway, "My home is my castle," even though there's an apartment in it. They seem to think that their mortgage payment makes them the lords of their manor, besides being landlords. As a result, tenants are harassed, and their privacy and their quiet enjoyment is interfered with. While this regal attitude is partly due to failing to let go of these notions, it is also due to a fundamental lack of knowledge of the respective rights and obligations of landlords and tenants under the residential tenancy laws of our province.

TAG recommends more tenant hotlines. We'd recommend perhaps a landlord hotline. We'd recommend a home-planning advisory service for landlords. We recommend continuing funding for the landlord and tenant duty counsel down at the courthouse, and we recommend increased resources for the Landlord's Self Help Centre, a legal clinic for small landlords. TAG calls upon the government to launch an educational campaign to ensure that all these new tenants and new landlords can understand the respective rights and obligations and exercise them in meaningful and appropriate ways. Otherwise, my job's going to be a lot harder.

I just want to spend a few minutes on amendments to the Rent Control Act. There is an awful lot of technical points we want to make about these amendments. We are deeply concerned that the government is revisiting the past, and not learning from it but rather repeating its mistakes.

When they created a whole new group of exempt housing in 1987, they allowed a club where people were exempt from the law. We believe these errors are being relived by extending much-needed protection to some of this housing while at the same time creating another new category of housing, exempting it from the critical coverage of the Rent Control Act and defining it in such vague, broad terms that this government is, for all practical purposes, inviting those landlords to give their housing a new name. Meanwhile, this government is continuing to leave it up to individual tenants to challenge the landlords on a case-by-case basis with respect to these exemptions.

Many tenants live in what I call the Keith Whitney Homes situation, a case between Keith Whitney Homes and Ron Payne. Mr Payne said, "I live in Keith Whitney

Homes but I don't want all the services it provides," but a judge in landlord and tenant court said, "This premises is exempt from the Landlord and Tenant Act, part IV, because you're getting some sort of support." Even if the service is not provided to a tenant, this accommodation can be exempt. With the new care home provisions, you can have the same kind of situation because the phrase used is "intended to be occupied for the purposes of providing care." It's been clear that the courts see this as the landlords' intention and not the tenants' intention that is being referred to here.

A new form of discrimination this bill was supposed to eradicate is being brought back to life by distinguishing between two groups of tenants on prohibited grounds. While boardinghouse tenants will have their meals regulated, tenants in care homes will not, leaving them unprotected and vulnerable once again simply because their special needs require them to live in care homes.

We must ask, will this government learn from its past mistakes? There is still time.

As was mentioned by Elinor Mahoney in the Parkdale brief, this exemption for meals allows for a loophole, and it's a large loophole, a loophole big enough to drive a truck through. Actually, it's probably a loophole big enough to launch a space shuttle through, as far as I'm concerned. Any boardinghouse owner who wouldn't use this loophole and say, "I'm now a care home," would be crazy. You can jack up the meals part of your rent as much as you want, because what used to be included in the rent is now separated out, and it's free to go up as much as you want it to, subject to whatever "market forces" there may be.

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We fear there will be constructive evictions for tenants when their meal charges go up like that, and that tenants will suffer the awful indignity of having to leave their homes once they can no longer afford escalating meal costs, perhaps after their meal service has been discontinued and they've been living without proper food for several days or weeks. While some tenants can shop for meals if the meals are removed from their housing charge, if meals are still provided onsite arbitrary increases in meal costs will become an effective means of constructively evicting that tenant.

These tenants may have a lease and, although forced to move out due to exorbitant meal cost increases, will still be liable under that lease; they may in fact be sued by their housing provider for future rents. The clear and frightening scenario emerges of landlords holding tenants to their leases, while at the same time constructively evicting them. This is totally unacceptable.

The right to security of tenure can offer no protection against uncontrolled increases in costs for these essential services and necessities of life. Ironically, that right to security of tenure becomes a burden, placing obligations on these tenants they cannot meet.

If they are on social assistance, as many of these tenants are, their social assistance cheque does not increase due to any increase in the meal charge, unlike increases in the shelter subsidy portion to reflect increases

in rents. Their living allowance will be eaten into by their meal charges.

Many of these tenants have limited options because of their age or disability. They may be completely unable to shop or prepare any food for themselves, and their own homes probably won't even have cooking facilities. Food becomes the lever landlords can use to keep them compliant and silent about other abuses of their rights. TAG recommends that meals should be regulated.

Meals have always been included in rent in regular rooming and boarding houses and will continue to be covered. There is no practical reason this same practice cannot apply to housing with care services.

I'll skip over a bunch of other technical points I was going to make about the Rent Control Act. They are in the brief. There are some serious problems, and I would certainly recommend that you read them.

One problem has to do with the registration of the rents for care homes. The rent registry was intended to cover premises from three to six units in 1991, and landlords have to register their rents. Many rooming houses and boarding houses will have to register as of that date. This law changes that situation. If you say you're a care home, the initial rent date you have to register is the rent on November 23, 1993. Any illegal rent increases in the meantime during that period are allowed; they just become inserted into the rent and any future rents are based on that increase.

I would point out that the ability to convert to a care home is very easy. You can become a care home overnight: You can just declare yourself to be a care home. While there's provision in the bill that the definition of care home will not include those units converted contrary to the Rental Housing Protection Act, that's only the case once this bill becomes law. In the meantime, it's open season for landlords to convert. Unfortunately, you're closing the barn door after the horse has left. TAG recommends that the RHPA provisions should be retroactive to prevent this loophole.

There are a number of transitional problems I would refer you to in the brief.

There are a number of provisions regarding shared accommodation, because many of these care homes have shared accommodation. TAG agrees with most of those recommendations regarding shared accommodation. TAG has concerns that those shared accommodation provisions regarding coercion, that that attempt to prevent coercion, provides no remedy if there was in fact coercion. There should be remedy in the law if a tenant said they were coerced, and there isn't.

We believe those provisions regarding shared accommodation should apply to all shared accommodation. They should be extended to any rooming house, any boarding house, any type of situation like that where tenants share accommodation, split up their rent and are jointly and severally liable for the rent under the present law. We believe that those provisions should apply to all situations and that those tenants should be free to divide up their rent and that the maximum rent per tenant can be chargeable under rent control and regulated. There should

be no distinction between tenants living in care facilities and other tenants living in rooming and boarding houses as far as their rights under the Rent Control Act are concerned.

I mentioned the inconsistencies in the amendments. I won't go into that any further other than to ask for clarification. In terms of the amendments to the Planning Act to allow apartments in houses, I won't go into that position. I have handed out to you the position paper of the Inclusive Neighbourhoods Campaign. They've already appeared before you. They've already done their presentation. Their brief is very detailed as far as the apartments-in-houses legislation is concerned and TAG adopts every recommendation in that brief.

In terms of what the government should do, TAG's position in one phrase is that a tenant is a tenant is a tenant. TAG's position is that any tenant living in any type of accommodation should have the rights of the Landlord and Tenant Act. This government does not go far enough. It does not provide Landlord and Tenant Act coverage to people living in rooming and boarding houses. It does not cover tenants living in accommodation that may be zoned improperly. It does not cover tenants who are living in accommodation where there perhaps are violations of building standards. These are called, in the rubric, illegal units, and these units may not be covered by the Landlord and Tenant Act, especially given the decisions of some judges in the landlord and tenant court.

TAG recommends that all those tenants should have the rights of tenants. TAG recommends that the powers of municipalities should be changed so that municipalities can assist those tenants in making that accommodation come up to standards. TAG recommends that any type of increased inspection powers by municipal inspectors should be tenant-driven and that with any violations of zoning and any violations of standards, the remedies for those violations should mean that those violations are remedied; however, the tenant is not to be evicted. That's been the situation up until this time and tenants have suffered due to the illegalities and the lack of action of their landlords. That's an intolerable situation.

That's my presentation. I'm sorry; I've left you about a minute for questions.

The Chair: Just about precisely a minute.

Mr Gary Wilson: Thanks for a very detailed brief. It gives us a lot of things to consider over the next weeks of hearings and the clause-by-clause analysis. I would just like to mention the issue of the food. Of course, we have taken that into account as part of the care services, and separated it from the accommodation, partly because the food can fluctuate differently from the rental and could put pressure on the level of the increase to the rent, forcing it higher. We are going to monitor, though. The legislation allows regulations in the future if the care costs appear to be out of line with what the true costs of them should be, through monitoring, by comparison to what they are in the wider society. That is what we have done to try to control that, or at least consider that aspect.

Mr Smith: I think monitoring is kind of cold comfort. I think you need to regulate it. It's as simple as that.

Mr Cordiano: There are so many questions and not enough time, so let me ask this basic question: Did the minister attempt to consult with you on Bill 120 before it was introduced? Did anyone approach you?

Mr Smith: Did the minister approach TAG?

Mr Cordiano: Yes, your group.

Mr Smith: No, I don't believe so. This is part of a long, ongoing process. You're probably aware of Bill 90 with regard to apartments in houses. We had put in positions about that.

Mr Cordiano: So you were consulted on that part of the legislation.

Mr Smith: TAG has also put in a position on the Lightman report and on what TAG feels should be done as a result of the Lightman commission report, which is the first part of this bill.

Mr Cordiano: What you're telling me is you did have some consultation with the ministry.

Mr Smith: Yes, in effect.

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Mr Jackson: This is a very comprehensive brief. One of the questions you raised during your presentation was additional resources required to give full force and effect to the expanded number of landlords and tenants so that those services are available. Since I'm not a regular member of this committee, I assume the government addressed that question early. Perhaps it could be shared with me and shared with TAG so that it knows how many additional resources will be applied to servicing these component parts that respond to landlord and tenant matters, now that we're expanding the base. I'm as interested as you are in that question. If it's available, I've asked that they share it with you.

Mr Smith: Thank you very much.

Mr Jackson: That was a request for information.

The Chair: I understand that to be. I'm certain that the ministry has taken note of Mr Jackson's request and that an answer will be forthcoming before these hearings are at an end.

Thank you very much for appearing today. We appreciate your comments. So you would know, the committee will be discussing this bill clause by clause during the week of March 6, and seeing as you've made a number of interesting amendment suggestions, perhaps the committee will consider those.

Mr Smith: Perhaps to respond to Mr Cordiano, we are available for other questions if he wishes to ask them another time.

ROOMERS' RIGHTS ORGANIZATION (TORONTO)

The Chair: The next presentation is Roomers' Rights Organization (Toronto) Inc. Good afternoon. Welcome to the committee. You've been allocated 30 minutes for your presentation. You should introduce yourself and your position within the organization, and then begin.

Miss Patricia McCartie: First of all, I won't take nearly 30 minutes. I had some other people who were supposed to come with me and they're not here. My name is Patricia McCartie and I'm with Roomers' Rights Organization (Toronto) Inc. I'm here on behalf of

Roomers' Rights and rooming house tenants in Toronto and of course the province.

I'm in a rather unique position because I was the property manager for some rooming houses, some low-income housing on Dundas Street East, so I have a perspective from both the landlord and the tenant issues.

Roomers' Rights first of all endorses and supports the brief that was already presented to you by the Coalition for the Protection of Roomers and Rental Housing. I would like to say thank you to Evelyn Gigantes on her response to illegal rooming houses, illegal tenants and garbage bag evictions. This has been a real concern of Roomers' Rights. They have been lobbying, along with Neighbourhood Legal Services, for the implementation of some of this legislation.

I think the first thing I'd like to say is that the actual name of this legislation is the residents' rights bill. In the major elements of the residents' rights bill, the last article suggests tenants in existing illegal apartments in houses will have an improved ability to exercise their rights to a safe and secure unit. I would like to suggest today that this neglects to cover illegal rooming house tenants. I think you're doing a real disservice to the people of Ontario when you neglect to include rooming house tenants in this legislation.

It's not the fault of the tenants that they're living in illegal accommodation. A lot of tenants don't even realize they are in illegal tenancy until they take steps to try to get repairs or to try to exercise their rights under the Landlord and Tenant Act.

As I suggested to you, having been in the management position, I can understand why some of the landlords do some of the things they do, but I don't condone it. Some rooming house tenants are very difficult people to live with, but the issue is that these people have to have somewhere to live and low-income people are traditionally hard to house. The people in Rosedale don't have to worry about being covered under the Landlord and Tenant Act.

As far as basement apartments are concerned, it's a real tragedy that people have to die in fires like the one that happened in Mississauga in December. But I would suggest to Hazel McCallion that these fires and these tragedies would be fewer and farther between if these apartments were regulated and if these tenants had the right to complain and to exercise their rights to have repairs done. In the case of the Mississauga fire, I understand that it wasn't necessarily the landlord's fault in the first place.

I think there needs to be a real education process as far as the Landlord and Tenant Act is concerned, especially on basement apartments. Elinor suggested tenants are held hostage by their landlords, and they are.

I would also like to tell you about an apartment that's in downtown east end Toronto that is in an apartment building and is illegal. It's a converted laundry room. It's in a 16-storey apartment building, but the bottom two floors, which are designated as laundry and storage facilities, and even the underground parking areas, have been converted to apartments.

In this particular apartment, the windows are so far up on the wall that the person occupying the apartment has to stand on a kitchen table to open it. If there were a fire outside her apartment, she would be dead, literally, because the window, if she were able to reach it, has bars on the outside. She wouldn't be able to get out. The apartment floods every spring. In fact, in the last thaw it flooded again. She lost the walls of her apartment last spring; they literally collapsed. She called in inspectors and the inspectors said, "Oh, well." Nothing was done.

This is sort of an outside area of Regent Park so maybe they thought it was okay. Sorry; I get kind of upset about these things.

As I suggested, Bill 120 doesn't cover rooming house tenants, nor does it cover the availability of a provision for removing tenants who are causing problems in rooming house situations; ie, the Rupert Hotel fire. Roomers would like to see some provision made for fast-track eviction and for those people who are being fast-track evicted to be cared for. We don't endorse arbitrarily evicting people without allowing them somewhere to go or having some place where they can be accommodated.

While I was a manager of some of my rooming houses, there was a tenant there who was a crack addict. He sold crack and literally dropped a cement block three floors and just missed three other tenants who were walking into the house. We could not evict this man. He was in jail at one point and we still could not evict him. We lost all the tenants in that house because of that one person. This issue has to be addressed.

Having said that, we endorse and support the brief already presented to you by the Coalition for the Protection of Roomers and Rental Housing. I'd like to suggest that's pretty well all we'd like to say.

1510

Mr Cordiano: I would like to thank you for your presentation because I think it goes a long way towards addressing some of the concerns I have with respect to Bill 120. Unfortunately, I wasn't here for the presentation by Parkdale Community Legal Services, Elinor Mahoney, who was here. I think she pointed out the need for a fast-track eviction to me some time ago and for a temporary kind of eviction which would be the kind of—

Mr Owens: I don't think that's what she said.

The Chair: Mr Cordiano has the floor.

Mr Cordiano: Thank you, Mr Chairman, if I may continue.

The kind of situation that would be presented in a crisis type of circumstance or an emergency is the kind of thing that would require the temporary eviction we're speaking about, and you've pointed this out.

Miss McCartie: A temporary removal of some people who are causing a problem at the time. We would also endorse, though, fast-track eviction of people who are continuously disrupting the household.

Mr Cordiano: Right, that's just it, and under Bill 120 as presently drafted that would not be possible. Obviously, you couldn't deal with a situation like that other than to call the police and have the police deal with it—

Miss McCartie: Which sometimes doesn't help.

Mr Cordiano: There you go. We should hear from the police forces of the province, perhaps, around that question because I keep hearing the government say, and the minister has said this herself: "The police could be called in an emergency situation to deal with a difficult tenant. The laws of the land would apply." But I'm hearing from operators and from people who live in rooming houses that in difficult circumstances that present themselves often what will happen is that the police will show up and the incident is over and there isn't the kind of removal of the person to deal with the crisis that presented itself.

Miss McCartie: Either that or the police will not show up or the police won't have the jurisdiction to remove that person from the house. We had a situation when I was managing the houses where a superintendent called me one late night in December and suggested to me that there was a crack party going on, on the second floor. She was afraid to go to the bathroom. I called the police and asked them to go the house. I spoke to her later on and she suggested to me that the police had not come.

I called them back again and they suggested to me that there were plainclothes detectives in front of the house. That did not relieve her problem. She had a crack party going on in the house. She was not able to use the washroom facilities. What was her recourse? The police did not provide protection for the roomers. They were more interested in apprehending crack dealers.

Mr Cordiano: The reality is that these circumstances do come up, leaving the tenants who live in the rooming house situation very vulnerable to someone who's dangerous.

Miss McCartie: Exactly.

Mr Cordiano: I'm beginning to believe that the only way the government is going to understand this is to have these members live in a situation like that for a period of time.

Miss McCartie: I would love to see that happen. Unfortunately, and this is one of the issues I addressed with Evelyn Gigantes at My Room, My Home conference, you people have never lived in rooming house facilities.

Mr Fletcher: Yes, I have.

Miss McCartie: Good.

Mr Chris Stockwell (Etobicoke West): In Toronto?

Miss McCartie: In Toronto? Downtown?

The Chair: Remarks should be addressed through the Chair. Members know that Mr Cordiano has the floor.

Mr Cordiano: Mr Chairman, if I still have time, Mr Fletcher can answer that question. He lived in a rooming house and had firsthand experience.

The Chair: Mr Cordiano, your discussion is through the Chair to the witness.

Miss McCartie: Could I ask a question?

Mr Cordiano: You can make a statement.

Miss McCartie: Okay, could I ask anyone who's

lived in a rooming house situation in downtown Toronto to raise your hand.

Interjection.

Miss McCartie: I'm sorry? Parkdale?

Mr Cordiano: No, you don't qualify.

Mr Mills: One night? I've stayed one night.

Miss McCartie: I would suggest to this committee that living in a rooming house situation in downtown Toronto right now is just incredible. You not only have to deal with crack dealers; you have to deal with prostitutes; you also have to deal with cockroaches; you have to deal with rats and mice and furniture that falls apart and so-called kitchen facilities.

Myself as a manager of a rooming house situation, I'm sorry; I probably would not have lived in those houses and I worked very hard to make those houses presentable and do it at the cost of my job, because eventually the landlord lost the buildings to the mortgage company because he couldn't keep up the payments because one tenant got rid of 10. He lost the building.

In a lot of rooming house situations, you have to deal with people putting their fist through walls, putting their fist through doors. When they move out they take the refrigerator with them, whatever. It is very difficult to keep up rooming house homes, but they are a necessity. They need to be regulated, they need to be legalized and the tenants of these rooming houses need to have legal rights under the Landlord and Tenant Act. As it stands now, if the landlord does not have a permit for his rooming house, the tenant does not have legal rights. I'm sorry; that's ludicrous.

Mr David Johnson: This is very interesting. This is a different kind of deputation than most of the ones we've heard, so it's interesting to hear a different slant on this whole issue. You indicated you were the manager of a rooming house. Roughly what size? Was it a rooming house? Is that what you termed it?

Miss McCartie: We had three rooming houses. They were three rooming houses at 382, 386 and 388 Dundas Street East. They were adjacent to each other and we had 10, 10 and 12 rooms in the houses.

Mr David Johnson: So we're talking about 32 rooms in close proximity.

Miss McCartie: Yes.

Mr David Johnson: The Landlord and Tenant Act of course does not pertain—

Miss McCartie: It did cover some of ours because we did have our permits.

Mr David Johnson: So that's why, then, because the Landlord and Tenant Act covered some portion or all portions of these houses, the individual you mentioned to us who was causing all these problems could not be evicted.

Miss McCartie: Exactly.

Mr David Johnson: Did you pursue the Landlord and Tenant Act to evict the person?

Miss McCartie: Yes.

Mr David Johnson: What sort of experience did you

have going through the process?

Miss McCartie: He had to go to jail for crack dealing, and as long as he was in jail we couldn't evict him because he couldn't go through the due process.

Mr David Johnson: That's not the first time I've heard that story. It's the first time as a deputation but I heard it otherwise. If you start the process to get this person out who is driving everybody else out, I guess, or to distraction, then even if he's not in jail there's a process to go through.

Miss McCartie: Yes.

Mr David Johnson: When you started the process, was he in jail?

Miss McCartie: No, he was in the house.

Mr David Johnson: So you started the process, but then it takes a period of time to go through it.

Miss McCartie: Exactly.

Mr David Johnson: While you were going through that process—

Miss McCartie: He was arrested and jailed and then he was out. My boss, the owner of the house, tried garbage bag eviction, just outing him and changing the locks, and we were fined.

Mr David Johnson: So the tenant was back in.

Miss McCartie: Right.

Mr David Johnson: This was taking place over a period of how long?

Miss McCartie: Over a period of about three or four months. When you're on a month-to-month tenancy, it traditionally takes about 65 days to evict a tenant.

Mr David Johnson: Did you finally have this tenant evicted, or what happened?

Miss McCartie: We lost the building.

Mr David Johnson: During these three or four months that this was going on, were the other tenants were leaving?

Miss McCartie: Yes, in droves. Actually, the only people living in the house were illegal tenants that this drug dealer had brought in with him who were sleeping six and seven in a room. They were doing drugs, they were pimping, they were prostituting and nobody would go in and evict them. The only people we had to go to to evict them were police. You could almost go in there every day and kick out 10 people.

Mr David Johnson: When you mentioned this to the police, and I presume you indicated what was going on—

Miss McCartie: Yes.

Mr David Johnson: —that drugs were being dealt and there was prostitution and pimping and all this sort of stuff, what did the police say to you?

Miss McCartie: When I called them back the second time, the police who answered the phone suggested to me that there were plainclothes detectives outside the house who had been watching the house for a matter of a week or two and that they were interested in catching the crack dealers. From he intimidated to me as well there were plainclothes detectives in the house, but that did not help the superintendent.

Mr David Johnson: I presume they would have to actually see the drugs or the drug dealing or the pimping or prostitution. Without that hard evidence, there really isn't much the police could do, I would assume.

Miss McCartie: Exactly.
1520

Mr Stockwell: Then if they did see him and arrest him, that was like double jeopardy because then you would be guaranteed you couldn't get them out.

Miss McCartie: Right, because he'd be in jail. Now apparently, and I'm not positive, I believe it's being implemented that anybody who is convicted of drug dealing can be evicted, but if they're in jail—

Mr Stockwell: They're in the middle of due process. You can't kick them out.

Miss McCartie: Exactly.

Mr Stockwell: Your owner lost all the buildings?

Miss McCartie: Yes.

Mr Stockwell: But this was only happening in one of the buildings.

Miss McCartie: This was happening in one of the buildings. In one of the other houses that we had, there was a tenant of long standing whom we suspected of dealing drugs but who was not quite as bad as this fellow was. But when you went to him to collect the rent, he'd tell you to eff off and slam the door in your face, so we started proceedings against him on the fact that his rent was late. He pays his rent up, and then you start the proceedings all over again. Then we got him on continuous harassment, harassment of all the other tenants. Again you start the proceedings. He tells the judge he's going to be a good boy from now on and the judge gives you protection in the fact that you can bring him back under four days' notice.

Mr Stockwell: Did you do that?

Miss McCartie: We did.

Mr Stockwell: But in the meantime you lost all your other tenants.

Miss McCartie: Exactly.

Mr David Johnson: I think you were perhaps very sensitive in terms of your introduction of this. You felt that the tenants should be under the protection of the Landlord and Tenant Act but that there should be a fast eviction process to deal with people like this. At the same time, you said there should be care provided.

Miss McCartie: Not for that fellow.

Mr David Johnson: That's what I wondered. From the description that you gave, I'm not sure care would be available for that particular individual, the way you've described him.

Miss McCartie: I think jail would be the proper facility for him.

Mr David Johnson: But you're thinking of other incidents, I guess.

Miss McCartie: I'm thinking of other incidents in the fact of psychiatric survivors who have temporary problems. One of the interesting parts that came out of the My Room, My Home conference was that there was a

fellow there from California who was the administrator of several different rooming house situations, and they had a facilitative care building where they would have drug addicts and alcoholics. They would have the facilitative care and they would bring them back, dry them out, and when they were ready, they would move them into traditional housing.

If that person went back to prostitution, went back to alcohol or went back to drugs, they would go back to the facilitative care, but apparently, and this is what I disagree with, they only had one chance. You go back once and you go back into integrated housing. If you fail again, you're out. I agree with the process, but I would suggest that people are not going to fail just once. People who are psychiatric survivors, who are drug abusers, who are alcoholics, are not going to fail just once. You can't give up on them after just once.

Mr George Mammoliti (Yorkview): I want to touch on one area of your presentation, and that's the area of crack dealers and the frustration some landlords have in terms of eviction.

In speaking to the previous chair of the Metropolitan Toronto Housing Authority, she told me that they adopted a policy, and I've witnessed this policy myself in my community, the fast-track eviction policy that they have within MTHA when you talk about drug dealers and crack dealers and those who put immediate danger in the lives of people who live there on an everyday basis. They are very successful, from what I hear, in these types of evictions, and they're successful in that they work together with the police department. There's actually precedent at the court level that would evict even before the court case.

Miss McCartie: But I would suggest that this is exclusive to MTHA.

Mr Mammoliti: I don't think it's exclusive. I think it's a matter of a relationship between the police department and the property manager. I think what needs to happen in this province is that property managers need to gain a better relationship with the police department, a working relationship, such as MTHA has done in the past, and that's not happening across the province.

Miss McCartie: And/or an education process. I think one of the situations that is unique to rooming houses and low-income housing is the fact that a lot of these people have setup housing situations and are uneducated as to what's available to them.

Mr Mammoliti: I agree with you in terms of that. I think the province should be educating a little more, but I think the onus should also be on landlords as well.

Miss McCartie: On the landlords, yes.

Mr Mammoliti: Landlords need to take some responsibility in whom they're housing and the education component that comes along with that, and that's just not happening. While I can sit here and say, yes, we need to do a little more in terms of education, I think the government has done a lot more than pretty much any landlord that exists in the province. They've taken on a responsibility. We have, as a government. We've been changing the necessary legislation over the last few years to try and

take care of tenants. Landlords haven't and that's a proven fact. My response to your submission is that we should talk to the landlords a little more and educate landlords in terms of their responsibility to tenants.

Miss McCartie: Thank you. I think I agree with you.

Mr Owens: Just to begin with, Mr Cordiano represented to you that Elinor Mahoney and the Parkdale Community Legal Services support fast-track eviction, but that is in fact not the case.

In terms of your submission, I'm a little bit confused about the direction. I just want to make sure that I understand where you want us to go with that. You want rooming houses to be covered.

Miss McCartie: Yes, rooming houses and/or tenants of rooming houses, illegal rooming houses, because there are thousands of illegal rooming houses in downtown Toronto whose tenants are not covered under the Landlord and Tenant Act.

Mr Owens: Right. In doing that, you would like to see an amendment to Bill 120 with respect to the provision of abbreviated or fast-track eviction proceedings?

Miss McCartie: Yes.

Mr Owens: In terms of your experience, you describe the green garbage bag eviction as not being successful. My understanding is it's probably the first in history that hasn't been successful.

Miss McCartie: What I'm suggesting is not that it's not successful. What I'm suggesting is that garbage bag evictions should not be happening.

Mr Owens: Absolutely not. But in terms of your submission, that in order to get somebody out of one of the premises that you were managing—maybe I'm not understanding what you were saying—you summarily tossed somebody out, so I'm concerned—

Miss McCartie: No.

Mr Owens: The protection of tenants is what we need.

Miss McCartie: Right; of all tenants.

Mr Owens: Absolutely. In terms of the issues with respect to drugs, which is not an insignificant problem in this city, how do you protect the tenants who may not be involved, and this being a police issue, if the police don't want, for whatever reason, to respond to those requests? I'm not sure that we can do something about that here.

Miss McCartie: What I'm suggesting is, first of all, it's not the police responsibility to evict tenants from these housing situations. But what I am suggesting is that, first of all, someone who is obviously disrupting the house by throwing a cement block out of a third-floor window is jeopardizing the other persons' lives, okay? I am not suggesting I should be able to walk into a house and kick this person out. I'm suggesting there should be legislation available to the landlord to go through a process of evicting this person that doesn't take 65 days.

1530

Mr Owens: Chair, if you could stop the clock, I have a question of policy. My understanding—

Interjections: Stop the clock?

Mr Owens: All right. I'll yield to my colleague and then on a point of order I'll—

The Chair: I think you'll yield to the Chair, because the time has expired for the questions.

Mr Stockwell: He can use one of his time-outs. You've only got two left.

Mr Owens: Nice of you to drop in, Chris. Your half-day presence is welcome.

The Chair: Thank you very much for appearing before the committee today. It was most helpful.

Mr Owens: In terms of some of the concerns that have been raised with respect to the inability to obtain an eviction while a criminal proceeding is ongoing, I'd like to get some clarification from either Ministry of Housing policy staff or legal staff. It's my understanding that in fact an eviction can be obtained even though a person has not been convicted in criminal court of—whether it's selling drugs or whatever other illegal act.

The Chair: I will ask the ministry to take note of your interest in that particular issue and to report to us when it reports on Mr Jackson's interest in another matter.

ECUHOME CORP

Mr James Pike: My name's Jim Pike and I'm the current chairman of the board of Ecuhome Corp. With me is Ann Kidd, our managing director, and Gerry Mackenzie, who's a resident of Ecuhome.

You have quite a comprehensive package in front of you and I won't attempt to read it all to you, thankfully. I thought I would give you just a quick overview of what Ecuhome is. Basically, we've been in business for about 10 years. We provide housing to people in the city of Toronto, about 280 residents. We own 50 houses and we're sponsored by seven Christian faith groups. I happen to be a volunteer representing the Anglican Church, but we have the other faith groups represented on the board.

One of the reasons I wanted Gerry Mackenzie to join me was that as a volunteer board member and basically a housing provider, it's sometimes difficult to get a full perspective of what goes on in the housing milieu. You volunteer your time and you get involved in community activities, but at the end of the day you sometimes wonder whether you understand the full housing issues.

Gerry helped me to understand them pretty fully about four years ago when we had a deteriorating situation in a number of our houses. Basically, there was a situation of crack and violence, and Gerry's housing was threatened by those around him. We were able to take some action in our housing situation. We work under the Innkeepers Act and we were able to move Gerry to another house. We were able to take some action against the people who were undertaking some activities which were impacting the housing of others who were in our housing situation.

We have six or seven or eight people living in each of the 50 houses, so it's certainly a community-based approach that we have at Ecuhome. The community focus is very important to us. You really wouldn't know us, I don't think, on the streets where we operate. We try to fit

in with the community. We think it's very important that we be part of the community. In the same sense, we think it's important that people who live in our houses be part of the Ecuhome community for the care and service we provide.

As to the legislation before us, we would have liked to have participated in the drafting of it. We in fact tried to approach the minister a number of times, including sending letters, but we never really did get a response. In fact, we didn't get a response in terms of getting our input into the legislation.

Having said that we're concerned about it, because we would have liked to have influenced it, we do believe fairly strongly in the idea of the right to shelter and its protection afforded by the Landlord and Tenant Act. The difficulty we have with it is that because we are providers of shared accommodation, we are going to be in an intolerable situation with respect to one particular resident taking action against another resident etc. It's really going to upset our whole housing model. The remedies within the LTA with respect to eviction are particularly onerous. When you're in a situation where you have people living cooperatively, which is in a sense part of their care and therapy, it's very difficult to make a housing model like this work when we have to go back to the remedies of the LTA.

Our basic point is that we don't think this legislation should be passed in its current form. However, we're supportive of the idea of residents' rights and we think that is an admirable part of the legislation.

We would like to suggest that some constructive amendments be made to the legislation to accommodate our concern in that regard. Basically, what we're suggesting is that under this legislation you consider what we've called a part V to take care of termination procedures rather than the current time frame which is provided with the LTA. Some examples of that I think are with respect to the original Lightman work that was done. I believe he recommended an approach to take care of evictions, but it was really unworkable because of the way in which it was structured. It really followed the same path as the current LTA guidance. Perhaps that's the reason it wasn't proposed as part of the original legislation.

I suggest to you that we need to have something in there to help shared-living housing providers like the Ecuhomes of the world, something that would at least give us an opportunity to perhaps go before a judge, maybe use part of the ex parte applications that are currently used in the LTA, where with four days' notice you can do something. If we're to have someone who's affecting our housing care program sitting in place for an extended period of time, it goes without saying that the rest of our program for the other people we're helping is going to be severely affected.

That's the concern we have. We have 280 residents, and for the most part, they're happy with the housing model we have and provide and would like to see it continue in its current form. I'll say it again: We would certainly support the legislation from the point of view of what we're trying to do with tenure of residency and that type of thing, but we need a better way to handle the

particular part with respect to termination.

I think as well we need the ability to gain access to premises, perhaps with a 24-hour notice period, shorter perhaps if there are more severe circumstances that are under way in the house. Again, this relates to the nature of a shared living environment, with people living with each other.

There are a couple of other points with respect to the legislation. The definition of a care period as six months to us seems quite limited based on our experience with people who've been our residents, some for periods of time going beyond a number of years. It really becomes a judgement call in terms of what is a care period. When we look at the type of people who we've had through our project, they come from very different backgrounds and they have different requirements. To arbitrarily peg a six-month time frame for care we think is unreasonable. I'm not sure what the intent of six months was with respect to a care time frame.

The other part is the principal residence condition. Most of our residents do not have principal residences, so the idea of receiving care while living in a principal residence seems like another unreasonable type of program to put forward.

From our perspective as housing providers, using the resources of some of the churches that provide facilities within the neighbourhood, working in a housing environment where we fit into the community, we're part of the community in terms of the overall care, the satisfaction of giving the right kind of facilities to people. We think we're a role model for the type of housing you would want to provide in any community.

1540

The underpinning of it, though, is our ability to continue to offer our care program. This gets into a debate with respect to the rights of the individual versus the rights of the group. Although the rights of the individual are certainly important, we believe you have to look at the care facility in terms of people living cooperatively among themselves, and recognize that there are going to be situations where the rights of the resident have to be abridged in favour of the rights of the group.

We think that amending the legislation with some type of part V where you've got a better fast-track approach would certainly improve the quality of this legislation from our perspective.

The churches that we represent strongly believe in providing housing and care to people in communities everywhere, and I think they would be very disappointed if they were no longer able to sponsor this type of housing because they weren't able to run a proper and responsible housing organization like Ecuhome.

The material we've given to you outlines the type of processes and procedures we use in selecting our tenants, in having residents part of that process. It talks about our procedures for evicting tenants and all the processes that we go through. If there's one comment I would make there, many of our residents today, if they have any complaint, it's that we don't use our rights under the Innkeepers Act more forcefully and more regularly. We

go through a very long process of appeal before we implement them. We think these processes that we've developed would be instructive and helpful to you if you were to consider a part V in terms of a fast-track type of approach.

Those are the major parts of our presentation and there's a lot of additional information in terms of what we're basically recommending.

Mr David Johnson: I'd like to thank you very much for your very thoughtful deputation today, and secondly, for the excellent service you provide to people who obviously need that kind of support.

I was interested that in the brief, and Margaret brought it to my attention, there's a letter to the Minister of Housing which indicates to me that you've been in touch with the ministry. Am I reading this wrong? Tell me if I'm wrong here. It looks like on seven different occasions you've been in touch with the Ministry of Housing, but have not had even a response let alone an answer to your concerns over a period of 10 months. Am I interpreting this properly?

Mr Pike: You've interpreted that correctly, yes.

Mr David Johnson: I'm sure Margaret will want to follow up on that in a minute, but I find it just blows my mind that an organization like yours, which is providing very needed housing to people who are hard to house and that obviously has a great deal to contribute, can't even get a response from the minister's office or from the ministry. It boggles the mind.

I was interested in another aspect here that I'm not sure has been emphasized by other groups, although I suspect they would share your concern. It's on page 7 of your deputation where you've noted that "under the Landlord and Tenant Act, increased costs will be incurred by the departure of permanent stable residents who will no longer feel they can count on a clean and safe environment.... The delays in court, non-payment of rents and legal costs may rapidly expand into thousands of dollars."

For an organization such as yours, for the service you give, I imagine dollars are not in plentiful supply. What sort of financial aspect do you see this having? If the bill goes through the way it is right now, what will be the impact?

Mr Pike: We can only go by examples of other housing providers we're associated with, for example, Keith Whitney Homes which ran up a legal bill of around \$30,000. We've had our own legal bills with respect to challenges made on us working under the Innkeepers Act that have been in the \$6,000 or \$7,000 range, but we're really not funded for the legal bills and it's not part of our budget submission. Under this legislation, if it were to go through, we could easily see our legal bills going to \$100,000 a year.

Mr David Johnson: Where is that money going to come from? What will happen if that's the case?

Mr Pike: There are a number of approaches we might take. One is to cut back on our care, which we would do reluctantly. We could approach the government and ask it to fund a legal clinic, if you will, for providers like us to help us in these kinds of situations, because there

would be us and there would be other housing providers who would need that aid. But we're not sure whether there would be any money available for that.

Mr David Johnson: This is certainly going to be problem.

Mrs Margaret Marland (Mississauga South): First of all, I want to apologize because I couldn't meet with you yesterday morning. I appreciate very much the fact that Mr Johnson was able to do that on behalf of our caucus.

We would also like to tell you that we will be bringing in amendments to address the concerns you have brought to the committee today, because as you're aware, we have had a number of groups that provide similar types of housing that essentially face the total destruction of the program if we can't get this bill amended. So we are very sympathetic to your concerns and we certainly understand them fully.

What really, totally disgusts me is the fact that here we have a program—actually, I was pointing out to Mr Cordiano that there was a contract signed when they were the government, but I was missing one of the press releases in my package which goes back to 1983, when the original program was sponsored by the Ministry of Community and Social Services when we were the government.

Frankly, I don't really care who the government of the day is, but it really says something when two governments saw the merit of this program, and certainly I know that as a volunteer you're spending a lot of personal time. But here's a program that has been very viable, very important, in this case 280 residents, and yet we now have a government that doesn't even reply to you in nine months. I just find that so insulting, and I say that for the record because I would be embarrassed to be a government member who has to defend the fact that in nine months there is no response to this group.

I think it shows the fact that it keeps coming up in these hearings that while you were drafting this bill and long before you got to the final stage—

Mr Mammoliti: Point of order, Mr Chair.

Mrs Marland: I'm allowed to use my time however I wish, thank you, Mr Mammoliti.

Mr Mammoliti: Are we here to ask the deputants questions, or are we here to listen to a lecture from Mrs Marland?

The Chair: Mr Mammoliti would know that's not a point of order.

Mrs Marland: We can use our time as we choose and you know that. I think that by the time you've been here three and a half years, you should know what committee hearings are about.

Mr Mammoliti: Ask the question, Margaret.

Mrs Marland: I just want to say to you that I don't actually have any questions for you, because there's absolutely—

Laughter.

Mrs Marland: I'm glad you find that amusing, especially that the ministry staff find it amusing. I'd be

embarrassed to laugh, as a ministry staff person when there's been no response to the concerns that you've brought to this committee for nine months. But I would just like to tell you that obviously we know where your concerns are and we will get them addressed.

Mr Pike: Thank you.

Mr Gary Wilson: I'm afraid I'll have to use my time to ask Mrs Marland to tell us who the ministry staff is who's laughing.

Mr Mills: None of them.

Mr Gary Wilson: I'm sorry. It's on the record. I didn't see any ministry staff laughing at that.

Mr Mammoliti: That's a fair question.

Mr Gary Wilson: That is reprehensible. Anyway, I will return to this subject, partly because another thing—

Mrs Marland: I would be happy to do that for you.

Mr Gary Wilson: Oh, Mrs Marland will be happy to do it. All right.

Mrs Marland: But I'm not going to rise to that kind of bait.

Mr Gary Wilson: Okay, fair enough.

The Chair: This committee operates much better when—

Mr Gary Wilson: When Mrs Marland isn't here.

The Chair: —the discussion is one at a time with the people who have come to speak to us.

Mr Gary Wilson: Sorry, Mr Chair. I would like to mention a few things. We have heard two sides of this issue, what has been called fast-track eviction. The major one that speaks to our bill is where we're trying to treat all tenants in the same way, so that all tenants are covered by the Landlord and Tenant Act in the same way and therefore everyone would be covered by the provisions for eviction that are laid out in the act. Would you want everyone in the province to be subject to the suggestions you're making in your submission?

1550

Mr Pike: No. If you were able to make some definitions with respect to care providers, it would be directed towards that type of situation as opposed to, let's say, the 1.2 million other people who are covered by the general Landlord and Tenant Act. I'm not trying to speak on behalf of other landlords. They may want to have a better way of evicting people as well. In any event, I'm directing it towards the care giving side.

Mr Gary Wilson: A thing I'd like to raise is that although others have come forward with this concern about the eviction process, no one has really said that it presents problems on the order you do: the legal bill, for instance, that you expect will reach \$100,000. In fact, it's been suggested that there are relatively few cases that would require a different kind of process than exists now, and it's been suggested too that there are ways of covering them now, that there are the emergency means, using either legal, the police, or care workers from Health and Community and Social Services ministries. So there are other ways of dealing with it.

The second thing is that a process that goes through

the courts, as we would expect it would have to—you'd want an impartial hearing—still takes up time with the unit. It would have to sit empty, for instance, during a hearing regardless of where the person was. That raises a third issue: that the person has to go somewhere. If you evict a person from your tenancy, for instance, they have to find a room somewhere else and then the problem would have to be dealt with from that setting.

Mr Pike: We could be in the position of moving a person from one house to another while this process is under way because we have a number of units we can provide. In fact, we do that today when there are problems with people getting along in one house, so that part of it we could probably accommodate.

You were talking earlier, though, about the existing remedies to take care of people causing difficulties, the existing fast track or whatever that's available through the court system. Our experience and knowledge with that is that it's not fast and is onerous and would have a tremendous effect on our particular form of housing. I don't agree with the proposal made that the existing remedies would be effective.

Mr Gary Wilson: It's meant to protect everyone's rights. But I'll defer to my colleague.

Mr Owens: Your legal bill caught my attention—\$100,000 is a significant amount of money to spend on legal issues—and you also mentioned something about perhaps a legal clinic set up to facilitate you. Is there a legal clinic in your area currently that could work with you?

Mr Pike: There are currently a number of legal clinics at the moment that are working against us, if you will, and they're all government-funded.

Mr Owens: What do you mean by that?

Mr Pike: I basically mean that Ecuhome over the last year has been challenged on a number of occasions by many of the legal clinics that have made representations here, accusing us of garbage bag evictions—which, by the way, we've never done—and things like that. These people are already being funded by the government, so that's money the government's currently spending on a number of legal clinics. The point I was making was that if there's funding available for them, perhaps there should be funding available to us to help in our situation, should the legislation be changed.

It's very simple to add the numbers up. If one person in the Keith Whitney Homes situation cost \$30,000 in terms of legal challenges, I just put three full-blown situations on the table to get to \$100,000.

Ms Ann Kidd: In terms of the legal clinic idea, we're also talking about legally protecting the rights of some of the tenants who were not being advocated for by the legal clinics. Mr Mackenzie, who is here with us today, is an example: Residents in a house tried to get him out, and Ecuhome had a \$3,000 legal bill to defend his rights against the legal clinics. We're talking about a legal clinic that might protect the tenants as well as the non-profits in this situation.

Mr Cordiano: These are very interesting revelations. Perhaps if the minister had taken the time to consult with

you before drafting this bill—I have to reiterate that position, because it's absolutely astounding to me that this government would not have consulted a group such as yours. It's incredible that they ignored your group. In fact, I've asked this question of many of the groups that have come before us. I tell you honestly, some have been consulted. You haven't. I'm finding a pattern emerging that those who have concerns with the bill and come before the committee have not been consulted. Those who don't have concerns seem to have been consulted to a greater extent—or consulted at all—by the minister. That is mind-boggling. You've said the minister obviously made no effort to consult with you and you've tried on numerous occasions. Again I have to state that it's astounding that that is the case.

If Bill 120 is passed, it will affect your ability to run the homes you now run in as effective a manner as you do now. Can you be a little more specific about that? What kind of difficulty will result from Bill 120?

First, just to reiterate a point, you said earlier that you did not ever have a garbage bag eviction, that you've never turned anybody out on the street.

Mr Pike: That's correct. We never have had a garbage bag eviction.

Ms Kidd: Churches that have sponsored Ecuhome are primarily in the business of care, caring for individuals in need of a number of a number of things in their lives. We recognize housing security as a right that needs to be there, but it's part of a continuum of care. Basic shelter needs to be in the package, and it's at the very beginning, but if we're forced into being landlords who collect rent and don't provide resource centres for social and recreational activities, do not provide cleaning supplies in our houses, a residents' council where our tenants don't have to go to legal clinics to organize outside of Ecuhome—there is a general assembly of Ecuhome residents organized by the residents that is speaking before this committee on February 9, and I hope all of you are here to listen to their deputation.

Mr Cordiano: I will be.

Ms Kidd: If we're forced into being landlords, our fear is that the churches will not be in the supportive housing market, and corporations like Ecuhome will be handed over to the municipal non-profits. Without a church base—

Mr Cordiano: Why do you think the minister and this government would want to destroy your program? I don't understand it. It's working. You've had no garbage bag evictions. You're a model for other homes. I really can't understand it.

Mr Pike: It's just a big question mark. We don't understand it either, and we think we could have helped with the legislation. I don't have a good answer to that question.

Mr Gerald Mackenzie: If I might speculate, I think one of the reasons is that basically what we have is a case of political grandstanding. We have people who believe they can deal with this issue in a blanket sort of way and talk about how they're protecting other people's rights, which of course scores political points. But if they

were willing to look at the special circumstances of different people such as those in Ecuhome, they would realize there are no blanket solutions.

Furthermore, quite frankly, I feel this is somebody's idea of saving taxpayers money, simply because once this bill goes through programs such as Ecuhome will no longer be viable. You can't protect people; you can't upkeep the property; you will probably have the places turning into crack houses. I can just see some member in the future saying, "It's shameful that government money is subsidizing crack houses," and the programs will eventually be shut down altogether. That this is being done in the name of liberalization and equality I find extremely disturbing.

Mr Cordiano: You are a tenant?

Mr Mackenzie: Correct. I have also sent a letter to your office outlining my position, as well as to Ms Marland, Mr Johnson and Mr Carrozza.

Mr David Johnson: My response is in the mail. You haven't received it yet?

Mr Mackenzie: No, sir.

Mr David Johnson: You'll get it soon.

Mr Cordiano: You've made a number of recommendations in your presentation, which we'll go through in more detail. You see as a possible solution to the section we're talking about, fast-track evictions, that section 114 of the Landlord and Tenant Act be amended to allow for that. I'll look at that very carefully, but that's how you foresee this being overcome.

Mr Pike: If we're not allowed to have our current exemption under the LTA and if this new legislation is adopted, we strongly recommend that there be a part V which would take care of a fast-tracking procedure, and we've given some ideas on how that might be done. One of our board members helped us draft that legislation and we'd be happy to cooperate with anybody to help enact it.

Mr Cordiano: Thank you. We'll seek your advice.

The Chair: Thank you very much for appearing before the committee today.

1600

ADVOCACY CENTRE FOR THE ELDERLY

The Chair: Members will note that we have cancellation of the 4 o'clock appointment, but fortunately the 4:30 appointment is with us, the Advocacy Centre for the Elderly.

Mr George Monticone: Good afternoon. My name is George Monticone. I'm a lawyer with the Advocacy Centre for the Elderly. On my right is Judith Wahl, who is the executive director of the advocacy centre.

The Advocacy Centre for the Elderly is a legal clinic for low-income seniors. It is funded by the Ontario legal aid plan, and we have been in operation since 1984.

Today I'd like to talk to you about three major issues in connection with Bill 120. I want to talk briefly about the Rent Control Act and Landlord and Tenant Act coverage; I would like to talk to you about the issue of monitoring service costs in care homes; and finally, I would like to talk to you about the question of the

vulnerable adults in care homes.

Over the past few years the Advocacy Centre for the Elderly has received a number of complaints from numerous seniors regarding high rents, high rent increases and threats of eviction. These threats have been primarily in the private sector, and I would like to remind this committee, in the face of the previous deputation, that there is a large number of private sector operations to which Bill 120 applies, and you should be as concerned about them as you are about non-profit operations.

You've heard from the Coalition for the Protection of Roomers and Rental Housing and others here about garbage bag evictions. They must be stopped by bringing care homes under the landlord and tenant legislation, but so must economic extortion and economic eviction be stopped.

Economic eviction occurs when a landlord raises the rent so high that a tenant cannot afford it and has to move out. In the private sector particularly, there have been difficulties regarding what I will call low-rent enticements. Seniors are enticed into housing with the offer of low rents, not being told that those rents will increase at some future time, and in some cases have increased dramatically.

This particular practice has preyed upon the lack of knowledge of what landlords can do, ie, that they can raise rents whenever they like and however much they like if they're not under landlord-tenant and rent control legislation. Many seniors are unsophisticated regarding the law and rental accommodation. This may have something to do with the fact that a lot of seniors going into retirement homes have lived in their own homes for many years. In a case we had before the courts, one of the tenants remarked that she knew nothing about landlord-tenant legislation and rent control legislation because when she last lived in rental accommodation, it didn't exist. It turned out that was 1933.

These low-rent enticements also prey upon the reluctance of many seniors to move, particularly if they have a disability or illness. Once they're in a place, they would like to stay there. In court cases we have dealt with, a number of tenant witnesses have remarked that when they went to that particular retirement home, they intended to be carried out only feet first.

Seniors are often surprised when they find out that they don't have the same protections as other tenants, or that they may not have and will have to go to court to find out whether they do. Therefore, we strongly support the inclusion of care homes under the Rent Control Act and the Landlord and Tenant Act. If this isn't done, there will continue to be challenges in the courts. There have been many, and I'll mention a few: the Chelsea Park case in London; the Grenadier case in Toronto; the Keith Whitney Homes case in Toronto; a case arising in Peterborough; another case arising in Windsor.

These will continue if you don't do something; in particular, if you don't do what Bill 120 suggests. If it isn't passed into law, the cost to the taxpayer and to many individuals of bringing these cases into the court will be on the head of those who are shortsighted and try to block Bill 120.

The previous deputation spoke of the high costs of litigation. We would suggest to you that it is primarily the cost of litigation about whether a particular building is or is not under landlord-tenant or is or is not under rent control legislation that is high. The speaker, I believe, was in fact referring to that. The intention of Bill 120, as I understand it, is to clarify these matters so that kind of high-cost litigation will not have to go forward.

Having voiced our support for this element of Bill 120, we have one caveat: We urge a simple amendment to include the costs of meals under the rent control legislation. I would remind you that our centre has always urged that at least mandatory services should be included under the Rent Control Act, those services for which tenants must pay if they are to live there.

If meals are not added to rent control, our fear is that boarding homes will self-declare themselves as care homes to remove the meal cost from the Rent Control Act. This will deprive boarding home tenants of legislative benefits they currently enjoy with respect to meal costs. We're sure this is an unintended consequence which should be prevented.

I'd like to move on to another area. We have many complaints from seniors regarding the care that's available in care homes: that it costs more than expected, that it's not as good as expected. There's a lot of confusion in the marketplace about retirement homes and similar accommodation. I suggest that this is possibly due to the fact that in some instances these residences are marketed as nursing homes. The impression is given that tenants' care needs will be taken care of and that changing care needs will be taken care of.

This is frequently a misrepresentation in one of two ways. Either the home doesn't have sufficient qualified staff to meet specific care needs—we are dealing right now with a woman who has a spouse in such a home who is an Alzheimer patient and was told he would be looked after, but indeed the home isn't able to do that, doesn't have the resources. There's also a possibility of misrepresentation in that the home may be able to access staff and facilities all right, but at a great cost and at an unexpected cost to the tenant, one which the tenant really can't afford. We emphasize that these are commonplace occurrences in both high-end and low-end care home accommodation.

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Bill 120 provides for a tenant information package to be given out before a tenancy agreement is concluded. We strongly support the idea and recommend that a prescribed form be developed, which is included as appendix A in our written submission. I would like to take you to that; appendix A is found right after page 16. This is merely a suggestion for what a tenant information package could look like. It has two main features. First, it attempts to describe to incoming tenants the type of services the home will be able to provide, what the costs of those services are and whether the tenant must pay for them as a condition of tenancy or whether they're optional. That kind of information is absolutely essential to avoid the widespread confusion in the marketplace around retirement homes.

We've also included in this package other kinds of information regarding the rights of tenants, in particular rights relating to notices of rent increases and notices of care cost increases. We think there is a need for education of tenants about their rights, particularly among the seniors population, where a number of people have no familiarity with the rental sector. We believe the tenant information package, which is provided for in general in Bill 120, should include information about rights as well as the particulars of services.

Finally, I'd like to talk to you about the issue of monitoring. The Minister of Housing, the Honourable Evelyn Gigantes, upon introducing Bill 120 to the Legislature remarked: "We will continue to monitor care service costs. If we see them rising dramatically, the act will allow us to move to regulate them through a change in regulations under the act." We are grateful to the minister for recognizing that service costs may escalate in retaliation for imposition of the Rent Control Act on rent costs. This is a very real possibility. Tenants may see meal costs or other kinds of service costs double or whatever.

It appears to be the government's intention to proceed slowly on the issue of monitoring service costs to see whether landlords are inclined to take advantage of the lack of regulation of those costs. While we are not enthused about a go-slow policy on this issue, as we favour including all mandatory services under the Rent Control Act, the go-slow policy is marginally acceptable if done right. Our fear is that it isn't quite done right in Bill 120.

Bill 120 requires registration of accommodation costs and what I'll refer to as global service costs, unit by unit. The global figure is meaningless in the context of monitoring the escalation of care costs. That's because the global figure doesn't specify how much of various services are included. The figure for a unit can rise or fall dramatically from one month to the next not because of any increase or decrease in the service costs or the rate but because the tenant increases or decreases the amount or type of service used from one month to the next.

Also, we want to make the point that registration of specifics about how much is paid for services or what kind of services a particular tenant uses is seen by many seniors as an invasion of privacy. They do not want their neighbours, or strangers looking at the rent registry, knowing that they need an attendant each day to help them bathe or toilet and so on. Out of respect for individual privacy, and because the information provided for in Bill 120 is useless anyway from a monitoring point of view, we recommend a modification of the requirements of section 21 and instead suggest a simpler alternative which we think not only landlords but tenants would support.

We suggest that each year landlords be required to register not only the rents, unit by unit, but also all of the services offered by the home, together with the hourly rates or the per-unit charge for each service. This has the dual advantage, as I said, of allowing the government to determine whether rates are increasing from one year to the next unreasonably, and also I think it would gather

some support from landlords.

Finally, in closing, we ask the government and all of you sitting around this table to remember Joseph Kendall, the Cedar Glen tenant who died at the hands of a negligent care home operator. Joseph Kendall and many others like him in care homes depend in some way on their landlord for more than shelter.

Professor Lightman in his A Community of Interests estimated that there are some 47,000 vulnerable adults in care homes, and many of his recommendations were founded on that fact. These included: municipal registration of care homes; a requirement of CPIC checks, police checks, for those setting up homes; a rest homes tribunal; measures to improve safety and quality of care; and a bill of rights.

The issues which led to the Lightman inquiry haven't gone away, nor will they if Bill 120 is passed. We ask the committee members to remember the Joseph Kendalls in the months and years ahead. There is a good deal more work to be done.

Mr Mills: Thank you for coming here this afternoon. I really enjoyed your presentation. Most of us here have a desire for justice in Ontario for everyone, and that includes seniors.

I take your point that seniors in some places see their rents escalate as much as 35%. I can tell you that in the riding I represent, Durham East, I have had seniors and their relatives come to me and show escalations of 100% and 150% in a year. They use this ruse, and I'll ask you to comment on these things: "You're in a special type of room, but now we want to move you into another room because the rate for the room you're in is really higher. If you go into this room, you're going to have to pay more, and we can't guarantee we can give you a room for that." There is all kind of intimidation put on these old folks, and I've gone around and spoken to a lot of these people.

I find it very difficult to get in, first of all, as a politician. They don't want me in there because they fear I'm up to something. Politicians as we are, we get an allocation of trillium pins and we give them to people. I go into a nursing home and hand these out to people and help put them on in some cases. The person who ran this nursing home, in front of those people, absolutely quite competent and in their senses—I thought it so demeaning—said, "Don't give those people any of your silly badges as they eat them because they think they're pills." That's the attitude. I think that was an awful statement to make to people, seniors who really have command of all their faculties.

There's another point I want to ask you about, whether you have any experience of it. In my riding, if people who are in these care homes go to the hospital, and sometimes they go for six or seven weeks, the operator says: "You've got to pay for this while you're gone. If you don't make arrangements to pay for it, I'm afraid when you come out that that room might not be there." Have you have some experience of that in your area?

Mr Monticone: Yes, we certainly have. It's common practice that when a tenant of a care home or retirement

home goes on a holiday or has to go into a hospital, they'll be asked to pay for services they would otherwise have to pay for. The more responsible homes sometimes give certain reductions for those services, but the reductions are in the neighbourhood of, say, 10% or 15% rather than 50% or 75%, so these tenants are paying for a good many services they're not receiving.

Mr Mills: I gather from the gist of your presentation that you are supportive of this legislation.

Mr Monticone: We certainly are.

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Mr Fletcher: Thank you for your presentation. As you know, this committee is listening to different presentations, and once we've heard the presentations there could be some amendments. I wholeheartedly agree with what you're saying as far as the meal allowance is concerned, and I think there are other members on the government side who agree with what you're saying. We should try to alleviate that problem in the upcoming amendments. I think that's something we should look at as a government.

Mr Monticone: Thank you for that comment. The meal portion certainly should be included under rent control for the reasons I mentioned. I'll give you an additional reason which I think should be mentioned here. We have acted as counsel for tenants in a home called the Grenadier. That has gone through the ministry, the Rent Review Hearings Board and Divisional Court and is sitting there waiting to go to the Court of Appeal. So far, we've won the case. The courts have found that the building is under rent control but they've also found that the meal portion of what the tenants pay is under rent control. That fits with what we're arguing here that you need to do anyway, but there's a court case out there saying that.

Mr Daigeler: I take it you are Toronto-based and serve the Toronto area?

Mr Monticone: That's correct.

Mr Daigeler: You don't serve anybody else in the province?

Mr Monticone: We do provide general information and some support resources to legal clinics and others outside of the Metro Toronto area, but in terms of providing individual legal services our mandate is Metro Toronto.

Mr Daigeler: You say that you're funded by the Ontario legal aid plan. I'm learning a lot here about how legal aid functions. You have an ongoing operating contract with legal aid? I always thought legal aid was just funding individual cases.

Mr Monticone: We're part of the legal aid clinic system. There are 70.

Mr Daigeler: And you are a separate legal clinic.

Mr Monticone: That's correct, specifically for low-income seniors.

Mr Grandmaître: You've talked about unregulated care homes, but what about regulated homes privately owned? I have quite a number in my riding, and these people are very satisfied. They don't like Bill 120. They

say: "I chose to live in this building. I appreciate the services and I appreciate the accommodations. Don't bother me." What do you do with these regulated homes?

Ms Judith Wahl: You might be confusing apples and oranges. A regulated home is a nursing home or home for the aged. What we're arguing and what we've argued in the courts, and the courts have been accepting our arguments, is that it's fundamentally unfair to have a sector of people, particularly senior citizens—that's who we deal with—living in what is called unregulated housing whereas all other housing is in some way regulated.

We get complaints on a daily basis. I've worked at the Advocacy Centre for the Elderly for 10 years, and we've had multitudes of complaints from people who live in retirement homes who are being discriminated against because they live in what is called unregulated housing. In most cases, I would argue that these places are subject already to the Landlord and Tenant Act and now rent control legislation, but it's proving that in each case: That's what's building up the legal costs, that's what's causing the problems. People complain when they get 40% and 50% and 60% rent increases. There's a large sector of people who have a lot of complaints to make.

Mr Cordiano: We've heard from various people in rest and retirement homes and homes for the aged that the vacancy rate is now upwards of around 25%. Do you have anything to say about that? Is that an accurate indication of the situation? I can't imagine 40% and 60% increases in rent with a vacancy rate around 25%.

Mr Monticone: I can't speak for all homes, and we certainly are not in the position to do a survey of all of the homes in the province—we don't even know where most of them are—but it is true from a number of them that they have a fairly high vacancy rate at this point.

Mr Cordiano: That's across the province, 25%.

The Chair: Sorry, Mr Cordiano. Mr Jackson.

Mr Jackson: Thank you for an excellent brief. I was interested in some new points you've raised: the dignity surrounding the treatment of the rent registry and its implications. I think that's worth exploring.

I want to say at the outset that I support your position with respect to the Grenadier, but I somehow feel that that is more the exception than the absolute rule. Putting that aside, I want to go back to a concern raised by Mr Mills, this figure of about 150% increases. I'm afraid we may be mixing Bill 100 and long-term care reform, where the government made a conscious decision with nursing homes and homes for the aged to work a deal with the private sector and non-profit corporations to pass on considerable rent increases.

The other thing that occurred in that legislation, as I understand it, was that there is a surcharge now occurring for seniors in nursing homes who are absent beyond, I heard at first, 12 days. I hear that now it might be stretched—we've been pressing the ministry—to 16 days. There's actually a penalty for seniors to pay if they're outside of their room for any reason.

You responded with respect to the notion of discounts. I know when my constituents are absent from a retire-

ment home, unregulated, there is some adjustment because they're not using the laundry—we have metered water, so they're not using the utilities—and they get a 10% or 15%, maybe as high as 20%, reduction, but they don't get a reduction from their basic rental costs.

I'm a bit confused. I hope you weren't suggesting that if a tenant is absent from their apartment for any reason they should get a rollback or a reduction. I was a bit confused by that and maybe you could help clarify it. I know the reverse is happening to nursing homes and I'm very upset about that. I think it's an unfair penalty. I think Mr Mills had a valid point, but he was really referring to the nursing home sector and the recent legislation.

I'll close with this point. Long-term care does separate the accommodation from the care function and from the meal portion. It did that for a set of reasons, but it is a principle with the government as the landlord, or the private sector with the government paying most of the expenses. They worked that principle of separating it. They can administer it while it's separate, but maybe our problem is administering the combination of the care services and/or meals with the accommodation portion.

Could you clarify the one point and then respond to my last point? I'd appreciate it.

Ms Wahl: I think you're right. There was maybe some confusion about what's under long-term care and what's under the retirement homes.

Mr Jackson: The rules are almost opposite.

Ms Wahl: In the retirement home sector, we have had experience with people getting very substantial rent increases. A good example of this is the Grenadier. Over a two-year period, the people were given between a 30% and 60% rent increase, and this is not uncommon. I would take issue with the point that this is an isolated experience. I can just go from my own experience of 10 years working at ACE that the number of cases—

Mr Jackson: It's the worst case, the most celebrated. I didn't mean to interrupt you.

Ms Wahl: It's not that it's the most celebrated case; it's the one that went to court. This is the whole issue while we're looking at the passage of Bill 120. People find it very difficult to go to court. They find it very difficult to pursue their rights. They end up sitting back and taking it, or they see this daunting road ahead of

them to try to prove—because the onus is put on the tenants to prove that the place is not a care facility as defined under the present legislation, and is subject to the Rent Control Act or Landlord and Tenant Act. The onus is placed on the tenants. That's very difficult to do.

I'm going to give the Grenadier as an example. We've been going through this case now for years. We started out with about 125 people, and the vast majority has died during the course of this action. That's what these people face, realistically: If they have to prove their rights, they don't get their rights in the end.

We need legislation that's going to make clear what is regulated, their rights within that accommodation, what are care services, a true definition of "care." Get rid of the smokescreen that's put on these places. Get rid of the confusion where people think these are nursing homes or homes for the aged. They're not. They're retirement homes; they have a lighter level of care services. Let's make it clear and let's be fair to the consumers so that people know what they're getting for their dollars.

Mr Jackson: I agree with your position on the Grenadier.

The Chair: Thank you, Mr Jackson. You've been most interesting.

Mr Jackson: There was a second clarification that I had requested, Mr Chair, if you would be so kind.

The Chair: The time actually has expired. If there is unanimous consent, we could hear the response. Do I have unanimous consent? Agreed.

Mr Monticone: Yes, there is in the nursing homes and homes for the aged now a distinction drawn between accommodation and other service costs. This is new, as you know. I don't know all the reasons it's been implemented, but it is relatively new. It has nothing to do with rent control and landlord-tenant. Those things are not an issue for that type of home, so I don't really see the relevance of that fact to the issue we have here today in terms of whether this legislation should apply to retirement homes.

The Chair: Thank you very much for coming today. For your information, the committee will be taking this bill up clause by clause during the week of March 6.

We will reconvene tomorrow morning at 10 am.

The committee adjourned at 1632.

STANDING COMMITTEE ON GENERAL GOVERNMENT

***Chair / Président:** Brown, Michael A. (Algoma-Manitoulin L)

***Vice-Chair / Vice-Président:** Daigeler, Hans (Nepean L)

*Arnott, Ted (Wellington PC)

Dadamo, George (Windsor-Sandwich ND)

*Fletcher, Derek (Guelph ND)

*Grandmaître, Bernard (Ottawa East/-Est L)

*Johnson, David (Don Mills PC)

*Mammoliti, George (Yorkview ND)

Morrow, Mark (Wentworth East/-Est ND)

Sorbara, Gregory S. (York Centre L)

Wessenger, Paul (Simcoe Centre ND)

White, Drummond (Durham Centre ND)

**In attendance / présents*

Substitutions present/ Membres remplaçants présents:

Cooper, Mike (Kitchener-Wilmot ND) for Mr White

Cordiano, Joseph (Lawrence L) for Mr Sorbara

Jackson, Cameron (Burlington South/-Sud PC) for Mr Arnott

Mills, Gordon (Durham East/-Est ND) for Mr Morrow

Owens, Stephen (Scarborough Centre ND) for Mr Dadamo

Wilson, Gary, (Kingston and The Islands/Kingston et Les Iles ND) for Mr Wessenger

Also taking part / Autres participants et participantes:

Marland, Margaret (Mississauga South/-Sud PC)

Stockwell, Chris (Etobicoke West/-Ouest PC)

Clerk / Greffier: Carrozza, Franco

Staff / Personnel: Luski, Lorraine, research officer, Legislative Research Service

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